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DIREK PORNSIMA

Date of Birth — Date de naissance March 1, 1945	Country of Birth — Lieu de naissance Thailand

Permanent Address — Résidence fixe

Chanthaburi Teachers' College
Chanthaburi, Thailand.

Title of Thesis — Titre de la thèse

The Legal Status of Teachers in Thailand

University — Université

The University of Alberta

Degree for which thesis was presented — Grade pour lequel cette thèse fut présentée

Ph.D.

Year this degree conferred — Année d'obtention de ce grade 1984	Name of Supervisor — Nom du directeur de thèse K. L. Ward

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THE LEGAL STATUS OF TEACHERS IN THAILAND

by

DIREK PORNSIMA

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PERMANENT ADDRESS:

Chanthaburi Teachers' College
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DATED April 16, 1984

THE UNIVERSITY OF ALBERTA

FACULTY OF GRADUATE STUDIES AND RESEARCH

The undersigned certify that they have read, and recommend to the faculty of GRADUATE STUDIES AND RESEARCH, for acceptance, a thesis entitled THE LEGAL STATUS OF TEACHERS IN THAILAND submitted by DIREK PORNSIMA in partial fulfilment of the requirements for the degree of DOCTOR OF PHILOSOPHY.

K. L. Ward

Supervisor

L. R. Gue

Edward S. Hickcox

External Examiner

Date April 2, 1984

ABSTRACT

This study described the legal status of teachers in Thailand. The term "legal status" refers to the relations between the teacher and other person(s) or organization(s) as prescribed by the law or regulations. In describing the legal status of Thai teachers, the writer examined laws, regulations, and circulars that have control over teachers. To assure the accuracy of the interpretation of the Thai teacher's legal status, disciplinary cases which were processed by Department of General Education, Ministry of Education during 1975-1981 were examined. Interviews with educational law experts were conducted. Clarification derived through the examination of disciplinary cases and the analysis of interview data was used to describe the legal status of Thai teachers.

Since Thailand is a civil law country, the legal status of Thai teachers is defined and included in the written law. The superordinate such as the principal, the Director-General, or the Permanent Secretary, however, is the person who has the power to interpret the law and thus is influential in shaping the legal status of teachers. Even though some aspects of the legal status of teachers are mandatory, the superordinate sometimes fails to adhere to the mandate. In practice, the superordinate's discretion often overrules the mandate.

The teacher himself has little understanding about his legal status. Many teachers perform their duties by relying on their superordinate's dictates. The lack of understanding coupled with the improper discharging of power of the superordinate could erode the legal position of the teacher.

The writer also found that the teacher who taught at a higher level of education was treated better by the government than was the teacher who taught at a lower level of education. The teacher's professional organization could not do much to eliminate this type of discrimination.

Finally, implications for teacher organizations, teacher educational institutions, and teachers were suggested. Also, recommendations for further study were made.

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CHAPTER I

INTRODUCTION

The (Thai) Teacher Regulation Act (1980) does not require a person who seeks a teaching job to have a teaching certificate. A graduate in any specialization of any government accredited institution (i.e. a high school, a trade school, a vocational college, a college of fine arts, a teachers' college, or a university) may apply for a teaching job. As well, the law does not require that the applicant receive training in education prior to his appointment.

Among the many institutions which participate in the preparation of teachers, the teachers' colleges seem to have most impact in developing prospective teachers. Each year, the thirty-six teachers' colleges, located in all regions of Thailand, produce more than 28,000 graduates. Roughly one third of them graduate with a baccalaureate degree, while the remainder obtain a Teacher Education Certificate (Department of Teacher Education: 1982). However, the teachers' colleges pay little attention in preparing graduates for the legal context in which they work. Although ED 473, a course in educational law, is included as an option, no teachers' college offers this course to its students; nor do the colleges train staff to teach this course. Therefore the teachers' college student who wishes to learn about educational law or the legal status of teachers has to study it by himself. Most graduates study educational law at the time when they prepare themselves for the appointment examination rather than as a part of their program. It would thus be difficult to expect teachers' college graduates to be knowledgeable in educational law.

The absence of educational law courses in Thai teachers' colleges is a major problem for graduates because of the nature and extent of laws and regulations that govern the behavior of Thai teachers. All such laws and regulations stem from the Constitution of the Kingdom of Thailand which lays down general principles concerning personnel administration of government officials and employees (including teachers). The subsequent development and interpretation of the many laws stemming from these general principles is confusing to teachers. A brief description of the most important of these follows.

The Promulgation of the Revolutionary Party #218 concerning government administration sets rules concerning practices of government organizations. This promulgation promotes congruence in practice between and among several government organizations. It determines lines of control within the hierarchies. However, since this law is the supreme law, it provides only general guidelines for practice. Each Ministry is encouraged to enact subordinate laws for its own purposes.

The Promulgation of the Revolutionary Party #216 concerning the reorganization of Ministries and Departments establishes the number of suborganizations within the Ministry and the responsibility of each suborganization. Since this promulgation states only general responsibility of the Ministry, in practice it is necessary that the executive enact some other subordinate laws. And, in some cases, where necessary, the National Assembly may enact another law at this same level to specify responsibility of some suborganizations. For example, in the case of the administration of elementary education, the National Assembly perceived that this level of education is vital and therefore specifically enacted the Royal Edict Concerning Elementary Education. Further, at the Department level, the Ministry initiates subordinate laws to elaborate the responsibilities of each Division attached to the Department.

The Teacher Regulation Act (1980) is the law that states the general guidelines for personnel administration of teachers. This includes the founding of the Teachers' Commission which is responsible for the administration of teachers all over the country. (Thailand has about 400,000 teachers, excluding private school teachers). The responsibility of the Commission includes the determination of teaching positions, the administration of appointment examinations, tenure, transfer, promotion, salary, fringe benefits, uniforms, working conditions, discipline, grievance, appeal, and dismissal. However, while this law is the major law, the members of the executive (such as the Minister, the Permanent Secretary, and the Director-General) are advised to enact subordinate laws to guide and direct their practices.

The Teachers' Act 1945 (revised in 1980) is the act that aims at protecting and developing the teaching profession. This act provides that the National Teachers' Council is responsible for protecting and developing the teaching profession, issuing rules and regulations for such purposes, and providing job security and welfare to teachers. In reality it is fanciful to expect that this Council could protect rights of teachers since more than half of the Council members are Directors-General who work with the Permanent Secretary and the Minister of Education on the Council. These high ranking officials have commitments to implement government policies and regulations handed down and initiated by the government.

The placement of enacting power in the executive, incorporated with the impotent structure of the Thai teacher organization (the National Teachers' Council), allows the executive to enact whatsoever subordinate laws or circulars they deem appropriate. The Thai legal system provides Thailand with many subordinate laws concerning the administration of Thai teachers. It is possible that some superordinates or newly appointed legal persons are ignorant about all the existing subordinate laws, especially those which were developed or enacted decades ago. Also, it is unreasonable to expect that teachers are knowledgeable about educational laws and their legal status since teacher-education institutions fail to provide adequate instruction concerning educational laws.

To perform his duties effectively, the Thai teacher must know his legal status in relation to the government oganization, the superordinate, the pupil, and the parent. Equally important, superordinates must be cognizant of relevant laws. It is hoped that the findings of this study will enlighten school administrators and guide them more effectively through the legal complexity of modern Thai society.

SIGNIFICANCE OF THE STUDY

In most countries the law prescribes certain rights and responsiblities for teachers. However, McCurdy (1964:4) is uncertain "...if teachers in Canada generally realize the extent to which the legislation determines their rights, duties, powers, privileges, and responsibilities". In Thailand, the writer observes that the current education program is not designed properly to train teachers to become familiar with the legal context in which they work. The course in educational law (ED 473) is included in the program but is rarely taught since the program is unstructured and most teachers' colleges have no staff who are trained to teach this course.

After examining several legal cases, the writer found that members of investigative committees have difficulty in following legal procedure and interpreting the intention of laws. Therefore, it is hoped that findings of this study, published in the Thai language, will be of use to Thai teachers and administrators as well as to the investigating committee. Further, the findings should encourage curriculum developers to better design the course on educational law. It is also hoped that findings of this study will be included in textbooks and used in teacher education institutions in Thailand.

STATEMENT OF THE PROBLEM

Moore studied public order and safety in Thailand and noted that (Moore, 1974:367):

> Thai attitudes towards the criminal code and its applications by the court are not clear. The vast majority of the people know little about the legal code or court procedures. For most of them, constitutional rights remain shadowy abstractions in sofar as they are conscious of them at all, and the questions of constitutional rights concerns no more than an educated minority.

Moore's findings are relevant to educational personnel since it is observed that many teachers are uninformed about their legal rights and duties. Each year, many teachers are accused of violating the law. Songchai Saihong, Head of the Disciplinary Section of the Department of General Education, discloses that "in the Department of General Education alone, there are about 400-500 teachers who are accused of violating the law each year. The cases that are processed will be filed at the Department (Songchai: 1982)." (The total number of teachers in this Department is about 85,000). In the subsequent investigations, many teachers plead ignorance of the law and many of them claim that they should not be punished. The high incidence of teachers charged with violations coupled with the large number of such teachers professing ignorance of the law, led to the development of the following research questions:

1. What are the legal relationships between the teacher and his superordinates, his peers, and his pupils?
2. What are the relationships between the teacher and his professional organizations, government organizations, and other types of organization that have control over him?

PURPOSE OF THE STUDY

Na-nakon[1] et al.(1982:343-350) explain that in making decisions concerning the level of punishment, the authorized superordinate should take into account these four principles; 1) the legal principle, 2) the compassionate principle, 3) the consistency principle, and 4) the government policy. In applying the legal principle, the authorized superordinate needs to study the law thoughtfully. The superordinate also needs to know components of each offence. At the same time, as a mature superordinate, he should be kind and compassionate by listening to explanations and causes of the offence so that he can decide the case compassionately. In addition, to maintain consistency of the punishment, he should study previous cases. Finally, the superordinate should study the government policy concerning disciplinary actions since in the past the accused could be innocent under the provision of law but guilty under the provision of the government circular.

---

[1] Praween Na-nakon is the Secretary-General to the Office of the Civil Service Commission.

According to the four principles noted, it is apparent that knowing only what the law says is insufficient. The teacher needs to know how the superordinate interprets the law. This can be done by studying decisions on previous cases. In this study, the writer attempts to explain major laws that have relevance for teachers through describing interpretations of such laws by superordinates. Specifically, the purposes of this study are:

1. To clarify legal relationships between teachers and their superordinates, their peers, and their pupils.
2. To clarify legal relationships between teachers and

their professional organizations, government organizations, and other related organizations.

3. To make recommendations concerning the legal status of teachers to the government and to related governing bodies of teachers.

SOME RELATED STUDIES

No research on the relationships between the law and educational personnel has yet been done in Thailand. The researcher thus discusses in this chapter some related Canadian studies. These include: The Legal Status of the Canadian Public School Pupil (Bargen:1961); The Legal Status of the Canadian School Board (Enns:1963); and The Legal Status of the Canadian Teacher (McCurdy:1968). Findings of these studies have been published by the Macmillan Company of Canada Limited and are used as texts in teacher education institutions across Canada.

Bargen's Study. Bargen (1961) began his study by discussing legal terms and legal processes. He then examined pupils' rights and responsibilities as prescribed by laws or statutes. Also, included in his study were analyses of pupils' legal cases that had been ruled on by Canadian courts. Summaries, implications, and recommendations made by Bargen (1961) have been relied upon by teachers and educational administrators across Canada.

Enns' Study. Enns (1963) began his study by discussing different kinds of laws and legal processes employed in Canada. He then examined powers, duties, and responsibilities of the Board as prescribed by laws and statutes of the country and provinces. Under each heading, legal cases and courts' judgments were analyzed and appended. Summaries, implications, and recommendations made in his study are valuable, and relied upon by School Board members and educational administrators across Canada. Also, Enns' work has been used as a text in teacher education institutions.

McCurdy's Study. McCurdy (1968) began his study by discussing legal concepts and legal jurisdiction over Canadian teachers. He then examined the legal status of the teacher regarding teacher certification, appointment, transfer, collective bargaining, tenure, termination of contract, professional conduct, pupils, academic freedom, and civil rights. Under each heading, teacher legal cases and court judgments were analyzed and appended. Observations, summaries, implications, and recommendations made by McCurdy (1968) are relied upon by teachers and educational administrators across Canada.

DELIMITATIONS

1. The present study is not intended to be a legal treatise. Instead, it is hoped that findings of this study will be used as a guide to understanding teachers' rights and responsibilities in Thailand.
2. With respect to teachers' rights and responsibilities, the basic focus is not upon the rights and responsibilities of the teacher as a private citizen. However, the rights and responsibilities of the teacher as a government official are examined and discussed thoroughly.
3. The study is delimited to the legal status of the teacher. The legal status of other educational participants is included only to the extent that their roles are relevant to our basic purpose.
4. Since all Thai government teachers are governed by similar legislation, legal cases analyzed in this study are delimited to the cases at the Department of General Education, the Ministry of Education only. Reasons for the delimitation are that the Department employs teachers who graduate from various institutions and that teachers who work with this Department possess divergent academic backgrounds.
5. The Thai legal system is a unique one. It has the characteristics of the common law of England, the characteristics of the civil laws of France and

Germany, and the characteristics of Thai customs. For this reason, the present study does not deal with research studies regarding the legal status of the teacher that have been done in other countries.

LIMITATIONS

1. Due to time constraint, the researcher could not examine disciplinary cases at other Departments attached to the Ministry of Education. Therefore, conclusions drawn in this study rely on disciplinary cases secured from one Department only.
2. Although attempts had been made to interview through three scheduled meetings with some Thai law professors, the researcher was unable to interview the professor who is considered knowledgeable in educational and disciplinary laws. The lack of interview data that should have been secured from the Thai law professors may limit conclusions and implications drawn in this study.
3. The researcher initially planned to interview some disciplined teachers. But the interview with this group of teachers could consequently bring disrepute to the superordinate. The lack of data from this group of teachers may also limit conclusions and implications drawn in this study.

DEFINITION OF TERMS

1. Status. Status is the legal standing or position of a person as determined by his membership in some class of persons legally enjoying certain rights or subject to certain limitations, conditions in respect (e.g., of liberty or servitude, marriage or celibacy, infancy or majority: Sanagan, 1978:208).
2. The legal status of the teacher. The legal status of the teacher refers to the relation between the teacher and other related person(s) or organization(s) as prescribed by the law and/or government circulars or policies.
3. Natural Justice. Natural justice refers to the rules to be followed by any person or body charged with the duty of adjudicating upon disputes between persons, or behavior which infringes upon the rights of others. The chief rules are to act fairly, in good faith, without bias, and in a judicial temper, and to give each party an opportunity of adequately stating his case (Burke, 1977:1221).
4. Investigating Committee. Investigating committee refers to the committee which is appointed by legitimate person(s). The investigating committee is responsible for the processing of teacher legal cases (i.e. enquiring, collecting documents and evidence, interpreting and applying law to the case, and making

recommendations to legitimate person(s) to make decisions).

5. Superordinate. Superordinate refers to the person who is authorized to control, direct, and supervise behaviors of his subordinates. This person can be the school principal, the Director of the school, Head of the Office of Provincial Elementary Education, Director of the college, and so forth.

6. Authorized superordinate. Authorized superordinate refers to the superordinate who possesses legal power, under the provision of Civil Service Regulation #5 and #6, to issue a punishment order to the offending teacher.

7. Teacher. Teacher refers to the teacher who is appointed to the position under the Teacher Regulation Act 1980 and is paid monthly by the Ministry of Education. This excludes private school teachers. The teacher may be called teacher, instructor, or professor.

8. Discipline. Discipline is a written rule or regulation. It regulates discernible behaviors such as conduct or speech of human beings. One who violates the discipline will be condemned or punished. The punishment to the violator may be a written warning, probation, salary cutback, salary demotion, or removal.

CHAPTER II

DESIGN OF THE STUDY

The present study is best described as descriptive research. The design tends to replicate an earlier study (McCurdy, 1964) but focuses on a different system of law in a different country. Specifically, considerations concerning research design were centered upon: (1) sources of data; (2) research methodology; (3) the development of interview questions; and (4) the conduct of the research.

SOURCES OF DATA

Data used in this study were secured from three major sources.

1. Published materials. These include legal texts, law commentaries, government policies, the Constitution, the Revolutionary Party Promulgation, the Reconstructional Party Order, the Royal Edicts, rules, regulations, drafts of bill, and reports of parliamentary debates on related acts.
2. Official documents. These include disciplinary cases that have been processed by the Department of General Education during the period 1975-1981.
3. Legal persons, educational law experts, and Thai law professors. Data received through interviewing these persons would confirm the accuracy of law interpretation and the analyses of disciplinary cases.

In this study, three legal persons, four educational law experts, one Thai law professor, and one Member of the Parliament were selected as interview informants.

RESEARCH METHODOLOGY

The purpose of this study was to describe the legal status of Thai teachers. The principle sources of data were thus government documents such as laws, regulations, official circulars, recorded disciplinary cases, and knowledgeable informants. Accordingly, the methodology employed included document searches, case study selection, and interviews, and the content analyses of the data provided through these methods.

Mouly (1963:281) points out advantages of content analysis in describing phenomena below:

> Not only is (content) analysis really a form of description, but without (content) analyses to provide a deeper insight into their basic nature, the adequate description of phenomena is relatively impossible.

Although the content analysis can be used to describe phenomena or documentary data, this research method relies heavily on validity of documents. Best (1970:133) cautions those who employ the content analysis procedure:

> Not only is the authenticity of the document important, but the validity of its content is crucial. The burden of proof lies with the researcher. It is his obligation to establish trustworthiness of all data that he draws from documentary sources.

Therefore, to assure the validity and to establish trustworthiness of data, the interviews with (Thai) educational law experts were conducted. The well-prepared interview questions should help the researcher secure relevant data that are useful to the description of the legal status of Thai teachers. Best (1970:187) points out advantages of the interview as follows:

> In areas where human motivation as revealed in reasons for actions, feeling, and attitudes is concerned, the interview can be most effective. In the hands of a skillful interviewer, a depth of response is possible, a penetration quite unlikely to be achieved through any other means.

This study deals with many disciplinary cases. The superordinate may have some unrevealed reasons in making decisions on these cases. The law-maker may have some unrevealed reasons in developing a particular law. Therefore the integration of the content analysis approach and the interview technique was considered to yield more valid and trustworthy data and consequently to help the researcher more adequately describe the legal status of Thai teachers.

THE DEVELOPMENT OF INTERVIEW QUESTIONS

Interview questions were semi-structured in nature. With the exception of legal persons, each informant was asked a different set of questions, depending on individual expertise. Altogether, seven sets of semi-structured questions were prepared.

In the development of interview questions, the researcher began with a review of legal texts, acts, regulations, ordinances, and disciplinary cases. Unclear or vague interpretation of legal matters which surfaced during the review were then posed as interview questions. Specifically, following the two-month review of disciplinary cases, a number of questions were prepared and categorized for different groups of informants. In addition, after each interview, the researcher reviewed the interview notes and formulated additional questions designed to clarify any vague responses. These were added to sets of the questions for the remaining informants. (See examples of interview questions in Appendix A.)

THE CONDUCT OF THE RESEARCH

The research procedures included: (1) securing permission to conduct the research; (2) collection of data; (3) analysis of data; and (4) organization of the report.

Securing Permission to Conduct the Research. The researcher submitted a formal request for permission to obtain access to disciplinary cases at the Department of General Education in October, 1981 (prior to the candidacy), and the permission was granted in the following month. In February, 1982, arrangements for the interviews were made, partly with the assistance of the Deputy-Permanent Secretary of the Ministry of Education. With the exception of Thai law professors, the informants were willing to participate in the research.

The Collection of Data.

a. The collection of disciplinary cases. The researcher began to collect disciplinary cases in January, 1982. The collection took about ten weeks. In the collection, the researcher reviewed all cases which were processed during 1975-1981, and selected those which best described the legal status of Thai teachers. After the selection, permission to photocopy selected cases was sought and obtained.

b. The collection of published materials. The researcher surveyed legal texts which were available in bookstores and collected those which were relevant to the study. Law commentaries and other published materials were secured from the Thai National Library and the Parliament Library.

c. The collection of interview data. After some arrangements (i.e. dates and locations of interviews, submission of interview questions, introductions, and permission to tape record the interview) were made, interviews with informants began. Most informants were interviewed once for a period of two to three hours. Only the Acting Secretary-General of the Office of Teachers'

Commission and the Director of the Division of Standards of Teaching Profession were interviewed twice. (See Schedules of Interview in Appendix B).

The Analysis of Data. Using written laws as a frame of reference, the researcher employed the content analysis method to analyze data received through the review of disciplinary cases and interviews, and then described the legal status of Thai teachers.

Organization of the Report. Categories reflecting the various aspects of the legal status of Thai teachers were developed. Each category was developed as a chapter. Specifically, this thesis is divided into nine chapters:

1. Chapter I- An overview of the study. This chapter provides the general background for the study. Specifically, the study purpose, significance, delimitations, and limitations are addressed.
2. Chapter II- This chapter addresses design of the study and the organization of the thesis.
3. Chapter III- The concept of law. This chapter provides legal concepts which are necessary for this study. The topics are included: history of Thai law, definition of Thai law, sources of Thai law, application of law, and beliefs and values that have influence on the the application of Thai law.
4. Chapter IV- Legal jurisdiction over Thai teachers. In this chapter, the researcher discusses major concepts

of six acts relevant to the legal status of Thai teachers. Included in the discussion are the development of, the power of and the relationships between these acts. Also, discussion related to some circulars and policies that affect rights and responsibilities of teachers is undertaken.

5. Chapter V- The legal status of teachers regarding certification, appointment, tenure, transfer, and promotion. Where applicable, legal cases and interview data are included.
6. Chapter VI- Discipline and disciplinary actions. In this chapter, the researcher discusses the meaning of discipline, the purpose of discipline, teacher discipline laws, codes of ethics, discipline and personnel administration of teachers, teacher dismissal procedure, grievance procedure, and appeal procedure.
7. Chapter VII- Salary, fringe benefits, and leaves. In this chapter, the researcher discusses salary procedure, travel allowance, hardship allowance, moving allowance, housing allowance, dependents' educational fees allowance, health care allowance, and pension. Finally, the reasearcher discusses seven categories of leaves: personal leave, sick leave, maternity leave, religious leave, military leave, study leave, and foreign visit leave. In most topics, legal cases and interview data are included.

8. Chapter VIII- The legal status of teachers regarding pupils, academic freedom, and civil rights. Where applicable, legal cases and interview data are included.
9. Chapter IX- Conclusions, implications, and recommendations. In this chapter, the researcher summarize concepts concerning acts and circulars that have control over Thai teachers. The chapter concludes with appropriate recommendations for teacher organizations, teacher education institutions, teachers, and recommendations for further research.

CHAPTER III

THE THAI LEGAL CONCEPT

In the study of the legal status of the teacher in Thailand, it is necessary that readers understand the Thai legal concept. Therefore, we discuss some concepts of Thai law which may be useful to the understanding of the legal status of the Thai teacher. These concepts are: 1) the history of Thai law, 2) the meaning of law, 3) sources of law, 4) the application of law, and 5) beliefs and values that affect the application of law.

HISTORY OF THAI LAW

The history of Thai law may best be described in terms of three periods: 1) the history of Thai law before King Rama V (1257-1868 A.D.), 2) the history of Thai law from King Rama V to the first 'democratic' government (1868-1932 A.D.), and 3) the history of Thai law from the first 'democratic' government up to the present (1932-).

Before King Rama V (1257-1868 A.D.). Before the massive changes in the legal system in the reign of King Rama V (1868-1910), Thailand, the country which emerged in the northern part of the present location, had four different capital cities at different periods of time. Each capital city was ruled by different dynasties and under different systems of law. Several jurists and law professors have divided the history of Thai law before King Rama V into four sub-periods: 1) the Sukhothai[2] period, 2) Lanna[3] period, 3) Sri-Ayuthaya or Ayuthaya[4] period, and 4) early Bangkok period.

1. **Sukhothai Period** (1257-1525). Most of the Sukhothai Kings were interested in Buddhism; therefore they taught their people about Buddhist sermons. In their teaching, they wrote sermons on stone inscriptions so that those who were interested in Buddhism could come and study on their own. Suthiwatnalueput (1973) studied the stone inscriptions and found that among the fifteen stone inscriptions discovered, only one of them discussed the law of the country. The stone inscription explains that Sukhothai Kings, especially King Ramkhamhaeng the Great, ruled the country under the paternal model. The King acted as if he were the father of his people. He provided justice and freedom to all people. The Thai could engage in all kinds of occupations. The citizen was free to run his business. With regard to this, the stone inscription says "the Thai may lead his horses or cows to sell wherever they wish. They are free to sell or buy horses, elephants, cows, gold, and silver (Sithiwatnalueput, 1973:137)". Further, in running any kind of business, the Thai were not required to

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[2] Sukhothai was the capital city of Thailand from 1257-1525 A.D.

[3] Lanna, presently Chiengmai, was an independent state from 1292-1558 A.D.

[4] Ayuthaya was the capital city of Thailand from 1350-1767 A.D.

pay taxes.

In the field of law and justice, Somsawat and Watanayon (1981:30) explain that the Sukhothai Kings used Buddhist jurisprudence which derived from India as a guideline in ruling on legal cases. The King developed guidelines for jurists in processing legal cases. In the guidelines, it was required that jurists decide the case without bias and commission, and be impersonal. This could be seen on the stone inscription which says (Suthiwatnalueput, 1973:147):

> Whoever being accused, after the collection of evidence and investigation, the judge would decide the case justly. The judge will not stand on any guilty side and neither be influenced by grain or property of any party.

To insure justice provided by the King's judges, King Ramkhamhaeng had installed a big bell in front of his palace. The citizen who faced difficulty and/or had been treated unjustly by the King's officials (including judges) could come to the palace and ring the bell so that the King could come out and listen to the case or grievances. Kamprasert (1978:17) explains the functions of the bell:

> In front of the gate, there is the bell. People of all occupations and dwellings who have trouble or would like to accuse any official for unjust acts, no matter how high the position of that official is, may come to the gate and ring the bell. Whenever he hears the bell, King Ramkhamhaeng comes out and investigates the case then provides justice to them. Sukhothai people appreciate their Kings.

In investigating the case, King Ramkhamhaeng investigated and decided the case himself ensuring that his people were treated justly. Further, the installation of the bell also acted as a reminder to government officials. The bell reminded them that the government official must act justly.

To induce Thai people to adhere to the law, the King persuaded his people to listen to Buddhist sermons at Buddhist temples, and persuaded them to behave according to the sermon. Generally, the Sukhothai people behaved themselves well and did not create problems for others. They enjoyed sharing and hated killing. Suthiwatnalueput (1973:126) concludes that the hate of killing was a major factor that made Sukhothai lose its independence to Ayuthaya troops without any bloodshed. King Sailuethai, the last King of Sukhothai, did not command his troops to fight but instead to surrender when the Ayuthaya troops approached Sukhothai.

2. **The Lanna Period** (1292-1558). Lanna, known as Chiangmai, was an independent state which emerged simultaneously with Sukhothai. The first King of Lanna was named Mangrai, so the law used to rule this state was given the name after this King- "Mangrai Sat or Mangrai Decisions". In developing *Mangrai Decision*, King Mangrai used Buddhist jurisprudence which derived from India as a reference in deciding legal cases. However, when Buddhist jurispudence was inapplicable, King Mangrai used his own intelligence. Somsawat and Watanayon (1981:33) explain that

decisions made by King Mangrai are relied upon by judges and subsequent Kings. *Mangrai Decision* worth discussion in this thesis are as follows:

a) Punishment of and rewards to government officials. *Mangrai Decision* states that the level of punishment of the unwilling soldier in the war is as follows (Suthiwatnalueput, 1973:216-217):

> In the war, soldiers who are too cowardly to fight must be executed. After the execution, his family members and his property must be confiscated. Those who receive a reprieve from execution must be condemned publicly by tattooing undesirable words on their faces then free them. This kind of punishment shall also apply to the cowardly superordinate.

As documented, the guideline is applicable to both the superordinate and the subordinate. However, in deciding the case, the authorized superordinate should decide the case with kindness and compassion. This means that the superordinate who has power to decide the case should consider good deeds conducted by an individual in the past. "The guilty soldier whose level of punishment is worth execution but had performed many good deeds in the past may be punished at any level as it is deemed appropriate by the authorized superordinate who has discretionary power to decide the case" (Suthiwatnalueput, 1973:217).

Soldiers who perform good deeds will be awarded rewards. King Mangrai developed the reward awarding procedure as explained below (Suthiwatnalueput, 1973:218):

> One who is brave and never steps backward from the enemy, if he gets killed, his family should not be confiscated. Instead, he should be honoured as a good example to other soldiers. The superordinate should provide care to that soldier's family members. If that soldier has sons, they should be reared up properly so that when they grow up they could serve the country as good soldiers.

According to this guideline, the superordinate had a commitment to look after family members of the dead soldier. The superordinate must not take over the property and the wife of the dead soldier but instead provide good care to them. Those who volunteered to fight and be victorious over the enemy of the country were rewarded accordingly. Suthiwatnalueput (1973:218) explains that "the infantry soldier would be promoted to be the cavalry soldier if he killed the cavalry soldier. The infantry soldier would be promoted to be the on-elephant fighter if he killed the on-elephant fighter of the enemy". Incorporated with such promotion, the victorious soldier would be awarded money, gold, clothes, and other household utensils.

b) Juridical procedure. *Mangrai Decision* provides that "judgment on the case must be done by a group of judges and with justice (Suthiwatnalueput, 1973:236)". Judges have to decide the case according to the principles of justice. This means that both parties must be given a chance to produce evidence and support. The King may order an enquiry on the judge if it is found that the judge decided the case with bias. Suthiwatnalueput (1973:236) explains that King Mangrai had laid out seven types of judgment which were illegal and had to be reconsidered: 1) judgment by female judges, 2) judgment at night time, 3) judgment at the judge's house, 4) judgment in the closed-door house, 5) judgment by the opponent, 6) judgment by the boss, and 7) judgment for the purpose of gaining children or wives of the guilty. However, *Mangrai Decision* does not allow an appeal. The judge might be required to alter the decision but would not receive any penalty.

3. **Ayuthaya Period** (1350-1767 A.D.). During this long period, Kings of Ayuthaya (33 Kings) made some progress concerning the development and the improvement of law. Pramoj (1967:40) found that, by the end of the Ayuthaya period, Ayuthaya Kings had developed 1603 articles of law. In compiling the law, most Ayuthaya Kings relied heavily on Buddhist jurisprudence, similar to what was earlier done by Sukhothai and Lanna Kings. Sarnprasert (1965:26) found that "in the case where Buddhist jurisprudence is inapplicable, the King will decide the case by using his own intelligence. His decision is relied on by judges and all King's decisions are compiled together as law of the country". Some legal procedures employed in the Ayuthaya period that are worth reporting for this thesis are as follows:

a) The Human Rights Act 1352 A.D. Chapter 110 of Ayuthaya law states that "a person shall not be detained or punished unless he has committed an offence (Pramoj, 1970:65)". This provision of law ascertains rights of

Ayuthaya citizens. They will not be punished or detained without guilt. To ascertain that his right was guaranteed, Ayuthaya Kings normally named other groups of officials to listen to grievances made by citizens. If it was found that citizens were punished unfairly, the King would order further enquiries.

b) The Disciplinary Act 1352 A.D. Kamprasert (1978:91-92) explains that the disciplinary act states twelve categories of government official offendings. These categories are:

> 1) the violation of the King's command, 2) offending the King's order, 3) avoiding performing tasks which are assigned to perform, 4) performing tasks which are not assigned to be performed, 5) oppressing citizens by taking away their children, wives, money, or property for the official's own benefit, 6) oppressing citizens in general, 7) providing protection to the offender, 8) injuring other government officials, 9) altering or modifying the King's command, 10) altering or modifying the law, 11) acting beyond the power prescribed, and 12) disregarding the King's preference.

According to these categories, it could be implied that the administrative system during the Ayuthaya period was well organized. Officials were assigned to perform their specific tasks and were not supposed to change their responsibilities without the permission of the King. The government official was expected to perform his task industriously. The official could not protect the offender. Kamprasert (1978:92) explains that the official who violated the discipline could be punished at any level including:

> 1) execution and confiscation of property, wives, and children, 2) laming and detainment to death, 3) whipping with rattan, 4) four times the standard penalty[5] and assigned to collecting grass for elephants, 5) three times the standard penalty and dismissed, 6) two times the standard penalty and condemned publicly, 7) one standard penalty and compensating the damage, 8) widening the mouth and inserting the coconut, 9) probation, and 10) reprimand.

The ten levels of punishment mentioned were not assigned to any of the categories of offending previously mentioned. The offender who violated the discipline would be executed, lamed, whipped, or penalized. The authorized superordinate had discretionary power to match the level of punishment to the offending.

c) Flexibility of law. During the Ayuthaya period, the superordinate had discretionary power to decide the case. However, it was dictated by the King that the superordinate take into account good deeds performed in the past of each individual offender. Therefore, two officials who violated the same category of discipline may have received different levels of punishment. Pramoj (1970:70) and Kamprasert (1978:96) explains that there were five categories of good deeds that should be considered in deciding the case:

> 1) those who had gone to war and had victory; 2) those who had volunteered to protect the country in war; 3) those who had volunteered to protect the capital city when bandits came; 4) those who had collected tax fairly and brought wealth to the palace; 5) those who had ruled on legal cases justly and never oppressed citizens.

The offending official who had performed any category of good deed mentioned would be awarded some kind of punishment reduction.

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[5] The standard penalty is 330 baht

d) Ayuthaya laws aimed at providing peace of mind and happiness to all citizens. The King legally had absolute power to enact the law but he rarely used such power by himself. Before enacting the law, the King would ask for reactions and comments to the bill from law-users, then make some adjustments. The King's consideration regarding the enacting of law could be seen in chapter 106 of the law concerning the transition of the throne which states (Pramoj, 1970:68):

> ... the official must follow the King's command strictly where such command is fair and just. If the command is unfair and/or unjust, the official must set aside the command thrice then present some reaction to the King privately. If the King, after hearing the reaction privately thrice, insists on enacting that command, the official is required to follow it. One who does not follow this provision is considered as a law violator.

To prevent the unjust enforcement of absolute power, chapter 1113 of the above law also states that (Pramoj, 1970:69) "... the official is not supposed to give the sword to the King while the King is furious. Those who violate this provision shall be executed".

4. Early Bangkok Period (1782-1868 A.D.). After the destruction of Ayuthaya by Burmese troops in 1767, most historical and legal documents were destroyed. Judges were dictated to rule on cases by using their legal memory based on Ayuthaya law. Somsawat and Watanayon (1981:38) and

Pramoj (1965:38) found that judgment by memory persisted up until 1804 when a case concerning a family matter between Amdaeng Pom (wife) and Nai Boonsee (husband) took place. In the case, Amdaeng Pom committed adultery with Pra Kasem[6] who was the judge at Nakonseetamarat city court. Amdaeng Pom initiated the case and requested a divorce. After hearing the case, Pra Kasem ruled that Amdaeng Pom be awarded a divorce and that she was entitled to half of the matimonial property. Nai Boonsee appealed to King Rama I. King Rama I reviewed the case himself and found that the judgment might be inappropriate. He then ordered the reviewing of all sets of family law available in the palace. After reviewing, it was found that Pra Kasem's judgment satisfied the existing law. The King therefore ordered the revision of all existing laws by a revision committee composed of eleven appointed members (four scholars, four jurists, and three high ranking officials).

The 1804 revision improved and modernized the Thai legal system. The law specified the components of each offence and the level of punishment for each offence. Administrative law is even more emphatic. Somsawat and Watanayon (1981:39) explain that three handwritten copies of each of the following laws were prepared: the law concerning the transition of the throne; the law concerning the administration of social class; the law concerning rights and responsibilities of citizens in private and criminal matters; the law concerning civil servants' hierarchies; the law concerning military hierarchies; family law; property law; and the law on court organization.

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[6] Pra is a position awarded to the King's high ranking official

Although Thai laws were modernized, they were not accepted by Western countries and Japan, who had contact with Thailand during that colonization period. Most Western countries reasoned that Thai laws were barbaric and unacceptable, especially the law concerning the investigating procedure which provided that a person may be pressed on his head, forced to walk on fire, or submerged into the water in order to prove innocence. Therefore, Westerners refuse to have their cases processed in Thai courts unless the Thai government revised this act and some other barbaric provisions.

From Rama V to the First Democratic Government (1868-1932 A.D.). After losing the country's legal independence to Western countries and Japan in the reign of King Rama IV, King Rama V (King Chulalongkorn) worked industriously to regain the country 's legal independence. For example, the King ordered the enactment of the Emancipation Act in 1874, the repeal of the Severe Investigation Procedure Act in 1897, the enactment of the Defamation Act in 1900, and the enactment of the Criminal Code in 1907.

In the revision of Thai law, King Rama V named the legal revision committee, half of whom were Thais and the other half were English, French, Belgian, Japanese, and Ceylonian law experts. In drafting the bill, this committee recruited legal principles from previous laws, existing laws, previous Kings' decisions, court's rulings, and foreign legal principles. The reliance on principles of law could be seen in the report of the committee (Sarnprasert, 1965:35):

> Before drafting, the committee will study principles of Thai law and courts' rulings then compare those principles and rulings to principles of foreign laws i.e. French law, English law, Swiss law, Japanese law, German law, Italian law, the Netherlands law, and the United States' law. Those which are deemed appropriate will be included as principles of Thai law.

After the death of King Rama V in 1911 A.D., the committee kept working (those who passed away were replaced). In regard to administrative law, King Rama VII realized the importance of civil servants and named royal princes to be responsible for this matter (Wichaidit, 1981:22):

> Prince Damrongrachanupap is responsible for the initiation of rules and regulations concerning civil servant administration. After being initiated, they are presented to the King. At that same time, Prince Nakornsawanworapinit is named to initiate the bill concerning Civil Servant Regulations.

After receiving drafts of rules, regulations, and bills concerning civil servants, King Rama VII named another committee to revise and modify these drafts. (The committee was composed of six members. Prince Chanthabureenaluenat was the chairman.) The first law concerning the administration of civil servants was promulgated on Febuary 23, 1928 and come into force on April 1, 1929.

From the First Democratic Government to the Present. (1932-). In 1932, a group of Thais, mostly military men, seized power from King Rama VII, claiming that the sovereign power belonged to the people and that the King must transfer such power to the people. The King wished to see such change but was concerned that most people were not ready to accept it. He did not wish to transfer his power to the militants but to citizenry itself. He was, however, forced to abdicated the throne in 1935. On his resignation, he announced (Chiamcharoen, 1978:11) "I am willing to transfer my power to my people but not to those who just want to have power and not really listen to the voice of the real citizens".

After the seizure in 1932, legislation was implemented by the National Assembly instead of the King. The committee, named by King Rama V, completed all major bills in 1935 and they were promulgated in that same year, thus allowing Thailand to regain its legal independence in 1938.

The change in government structure led to the change in the administration of civil servants. The Civil Service Regulation Act (1928), enacted by King Rama VII, was replaced by the Civil Service Regulation Act (1933). After that time, the Civil Service Regulation Act was revised from time to time. Na-nakon et al. (1982:8) explain that the present Civil Service Regulation Act (the Civil Service Regulation Act 1975) is the 8th edition. To maximize efficiency in personnel administration and to decentralize power, some other commissions which were to be responsible for personnel administration of some groups of government officials were founded. There are presently eleven commissions which are responsible for personnel administration of different groups of government officials.

With regard to the administration of teachers, teachers were administered under the provision of the Civil Service Regulation Act since the time they were named as governmnt officials in 1942. In 1966, the governement revised the Provincial Administration Act 1955, and as a result of the revision, elementary school teachers were named as provincial employees rather than civil servants. In 1980, the government enacted the Teacher Regulation Act (1980), and as a result, all teachers are administered under this new act.

Thai legal history points to several legal procedures which help to clarify the legal status of Thai government officials.

1. Law enactment. For the purpose of this study, the enactment process includes drafting, reading or considering, approving, and promulgating. In the Sukhothai and Lanna period, the law was enacted by the King. The King drafted,

read, approved, and promulgated the law. The King had absolute power to enact law without consideration by others. In the Ayuthaya period, the rule of enactment was changed slightly. Law-enforcers were encouraged to react and to provide comments to new laws. After the seizure of power in 1932, laws were enacted by parliament. The King acted only as the promulgator of the approved law. Further, the parliament (or occasionally the revolutionary party) delegated power for the enactment of subordinate laws to the executive. Today, laws enacted by parliament are considered more logical, more reasonable, and unbiased since they are read thrice by members of the parliament before coming into force.

2. The determination of offending and punishment. In the past, an offender was punished indiscriminately. The judge had the power to pass judgment (subject only to the King's whim). In deciding legal cases, it was suggested that the judge consider previous behavior of the offender. Those who had performed good deeds were awarded some punishment reduction. After the promulgation of the Civil Service Regulation Act, components of offending and the level of punishment were clearer. The offender must receive the punishment which is stated in the law. The present Civil Service Regulation Act provides three levels of punishment: serious, minor, and petty punishment.

Although the level of punishment and components of offending are stated clearly, the laws do not deal with all human behavior which can be considered as offences. The law-user is still required to interpret the law. An offence committed by different persons with different reasons will lead to different levels of punishment.

3. The control of justice provision. In the Sukhothai period, the King installed a bell in front of his palace. Any individual who had a grievance to present to the King could come to the palace and ring the bell. After hearing the bell, the King would come out and listen to the grievance himself. In the Ayuthaya period, the system was different. Ayuthaya Kings named a group of officials to visit villagers and collect grievances from them. Government officials did not oppress the citizens.

4. The judgment procedure. The Sukhothai law stated only that judges must decide the case on good faith, impersonality, and without inducement. In the Ayuthaya period, the judgment procedure was stated clearer. Eight types of illegal judgments were specified. After the seizure of power, the Civil Service Regulation #6 provides: that the superordinate has legal power to name an investigating committee; that the superordinate has legal power to prescribe level of punishment; that he has legal power to issue punishment orders to his subordinates; that he must receive and consider grievances from his

subordinates; and that he is to receive, and consider appeals, from his subordinates. If it is not a serious offence, the superordinate may issue a punishment order without any investigation.

5. The control of law enactment. The Ayuthaya law concerning the transition of the throne provided that the jury could advise against unjust laws enacted by the King. The jury was also encouraged to provide reaction for law adjustment to the King privately. After the seizure of power, no one could advise against the enacted law.

These five observations and the history of law described above are necessary for an understanding of the development of Thai law.

DEFINITION OF THAI LAW

Many jurists and law professors have provided definitions of Thai law. Among the many definitions, the following are the most interesting ones.

Prince Ratchabureederekrit[7] (1925:2) defined 'law' as "the order issued by the executive to the people. One who does not adhere to the order may be punished."

Prasertmatra (1946:32) defined 'law' as "law refers to all principles or standards of behavior which are accepted and enforced by the government. Those who do not adhere to standards or principles may be punished."

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[7] Prince Ratchabureederekrit was one of the Thai legal experts who was named to be a member of the Legal Revision Committee by King Rama V

Chamroonnetisat (1974:2) defines 'law' as "the order that regulates human behavior. It is issued by the executive, and will regulate behavior of people who live in that country. One who does not behave accordingly to the order may be punished".

Using definitions mentioned, jurists and law professors (Meechun, 1966:4-13; Seetamarak, 1977:66; Somsawat and Watanayon, 1981:5) conclude that the order that is regarded as the law must retain these five characteristics:

1. The regulation regulates behavior of human beings who live in that country. Saeng-utai (1962:826) explains that the regulation must aim at regulating observable behavior. The regulation must indicate what human beings can do or cannot do. But, it will not include human feelings. In addition, that regulation will regulate behavior of those who are dwelling in that country but not those who live in other countries except when the behavior of those jeopadizes security and benefits of the nation.

2. The regulation must be adopted by the sovereign. Somsawat and Watanayon (1981:5-7) explain that since the supreme ruler of each country are different from one another, therefore the law-issuers of each country are different. In Thailand, before 1932, Thais regarded the King as the sovereign so that the King had power to enact the law. In the country where military men hold sovereign

power, the military leader acts as the sovereign and also has the enactment power. In the country where citizens hold sovereign power, representatives of citizens retain enactment power. With regard to the enactment of the law, Meechun (1967:4) further explains that "a person or a legal person i.e. the company, the store, the Ministry, or ... is not a sovereign therefore has no legal power to enact the law except it is delegated such enactment power by the sovereign."

3. The regulation applies to all. The regulation must be applicable to all citizens or groups of citizens which the law aims at. The Thai Criminal Code, for example, is applicable to all who dwell in Thailand whether he is a villager, an official, or a Prime Minister. The Teacher Regulation Act (1980) is applicable to all teachers regardless of position. The law does not exempt the rich and regulate the poor. It regulates all.

4. The regulation which is everlasting. The law, after being enacted, will have its everlasting power. Two offenders who commit similar crimes will be punished similarly. The date of the offence will not affect the level of punishment. However, the law may be repealed by the sovereign.

5. The regulation has sanction. The regulation must specify the level of punishment for those who violate the law. Section 18 of the Thai Criminal Code states that "one

who violates the law may be executed, jailed, detained, fined, or have property confiscated". The nature of the offence determines the level of punishment.

The five characteristics mentioned are the required characteristics of the "actual law". If any of the five is missing, the regulation will not be regarded as the "actual law". However, Saeng-utai (1977) and Seetamarak (1975) classify law into two categories, the "actual" and the "procedural" law. The law that departs from the five characteristics is categorized as the procedural law. In other words, "the procedural law is the law which is legislated legally, but does not retain all legal characteristics (Saeng-utai, 1962:822)". Examples of the procedural law are the Annual Budget Acts, Monetary Acts, the Reorganization of Government Organization Acts, the Ministerial Regulations, the Civil Service Regulations, etc.

The five characteristics mentioned are general characteristics of Thai law. However, good laws need to have some other additional characteristics. Pramoj (1970:64) discusses characteristics of good laws by referring to Ayuthaya law:

> Ayuthaya Kings enforced the law for order, happiness, and peace of mind. The King will not enforce the law for his own benefit. The King enforces the law in order to bring in happiness and peace of mind to Thai people. The term "happiness and peace of mind" is very impressive since the King realizes that physical satisfaction (e.g. good house, good food, good health,...) is never enough. Also important is that the individual mind be satisfied. Individuals must be

free. Individuals must not be oppressed.

Accordingly, we can see that good laws should aim at promoting happiness and peace of mind. Mahakun (1974:63), in discussing the characteristics of good law, claims that "good laws must be reasonable". He further explains that good laws should (Mahakun, 1974:63):

> ... aim at maintaining social order, lead to social justice, and lay out guidelines concerning rights and freedom of social members. The law must protect people from fearfulness, adversity, and foolishness.

Conversely, Mahakun (1980:19) further states that "...unreasonable laws could lead to uncertainty and injustice. Such laws will be opposed, resisted, attacked, and finally repealed". Several examples of such unreasonable laws should be cited. The first one is the Royal Edict Concerning the Determination of Incompetent Municipal Officials 1945. This act was promulgated in the government gazette on September 26, 1945 and was repealed on December 31, 1946 due to wide resistance. The Royal Edict Concerning the Determination of Incompetent Government Officials and Municipal Officials 1947 is another example. The act was promulgated on August 23, 1947 and was repealed on August 31, 1948.

Since good laws must be reasonable and designed to promote happiness and peace of mind, the sovereign or the executive who is responsible for the enactment of the law must be aware of certain criteria. The law must not aim at protecting the benefits of particular groups. For example, the law concerning salary schedules must not value only university professors but also value elementary school teachers who are teaching in the far village.

Based on the definitions and characteristics of Thai law noted above, the determination of what is law and what is not is somewhat clarified. Saeng-utai (1977) and Kanchanadul (1980) list those which are regarded as law: the Constitution, the Law of the Court Organization, Codes, Promulgations of the Revolutionary Party, Royal Edicts, Emergency Decrees, Royal Decrees, Royal Promulgations, Ministerial Regulations, Civil Service Regulations, Government Bureau Regulations, Ministerial Promulgations, Provincial Legislation, Town Legislation, and Municipal Legislation. Saeng-utai (1977), Kanchanadul (1980), Kraivixian and Mahakun (1978) conclude that those which are similar to law but are not law are: orders, commands, administrative decisions, official promulgations, and regulations which are used within individual Departments or Ministries, and Orders of the Leader of the Revolutionary Party or the leader of the reconstructional party. These quasi-laws are not actual law. However, those who do not adhere to quasi-laws or who violate quasi-laws could be inconvenienced or punished. For civil servants, Section 74 of the Civil Service Regulation Act (1975) states that one who does not adhere to the quasi-law can be reprimanded or demoted.

SOURCES OF THAI LAW

Using the definition of Thai law previously discussed, one could conclude that Thailand is very dependent on written laws. In the case where written law is inapplicable, Section 4 para 2 of the Civil and Commercial Code states "where no provision is applicable, the case shall be decided according to the local custom."

While Thailand employs mostly written laws, Saeng-utai (1977:59) and Setamarak (1975:82) nevertheless categorize the sources of Thai law as both written law and customs.

Written Law. Saeng-utai (1977:159), Chantarasomboon (1980:113), and Somsawat and Watanayon (1981:53) claim that Thai written laws derive from three sources:

1) The National Assembly or Parliament.
2) The executive or the administration.
3) The self-governing organization.

The National Assembly. Section 3 of the Constitution of the Kingdom of Thailand 1978 states "the sovereign powers are adopted by the Thai people, the King who is Head of state executes those powers through the National Assembly, the Council of Ministers, and the court as stated in this constitution". This provision does not state directly that the National Assembly has responsibility to enact the law. But it is traditionally accepted that such responsibility belongs to the National Assembly. The National Assembly acts as the sovereign in legislating the law. The enactment, the revision, and the repeal power belong to the National Assembly. The National Assembly may, when it deems it advisable, delegate enactment of subordinate laws to the executive.

In the legislation of law by the National Assembly, Meechun (1967:63-64), formerly Secretary-General to the Office of the Juridical Council and Secretary of State, explains:

> The Ministry that wishes to enact the law will normally draft a bill of law, then forward that draft to the Council of Ministers. The Council of Ministers will consider the principle of the bill. If the principle is approved, that draft will be forwarded to the juridical council or to legal advisors of the Prime Minister for further verification. It is then returned to the Council of Ministers for reconsideration. If it is approved, the Prime Minister, as Head of the government, will forward that draft to the National Assembly for consideration. The National Assembly normally reads the bill three times. The first reading focuses on the principle of the bill. If it is approved in this first reading, the National Assembly will name a legislative committee to review and modify the bill section by section. However, the committee may not depart any section from the approved principle. After being modified and reviewed, the bill is returned to the National Assembly for the second reading where members of the parliament read the bill section by section. The third reading focuses only upon whether or not the bill should be promulgated. If it is recommended that the bill be enacted, it will be forwarded to the King for promulgation.

The ten major steps for enactment of Thai law, as noted above, are depicted in Figure 1 (page 48).

Of the ten steps, the second step is the most important. The committee named has to recruit and search

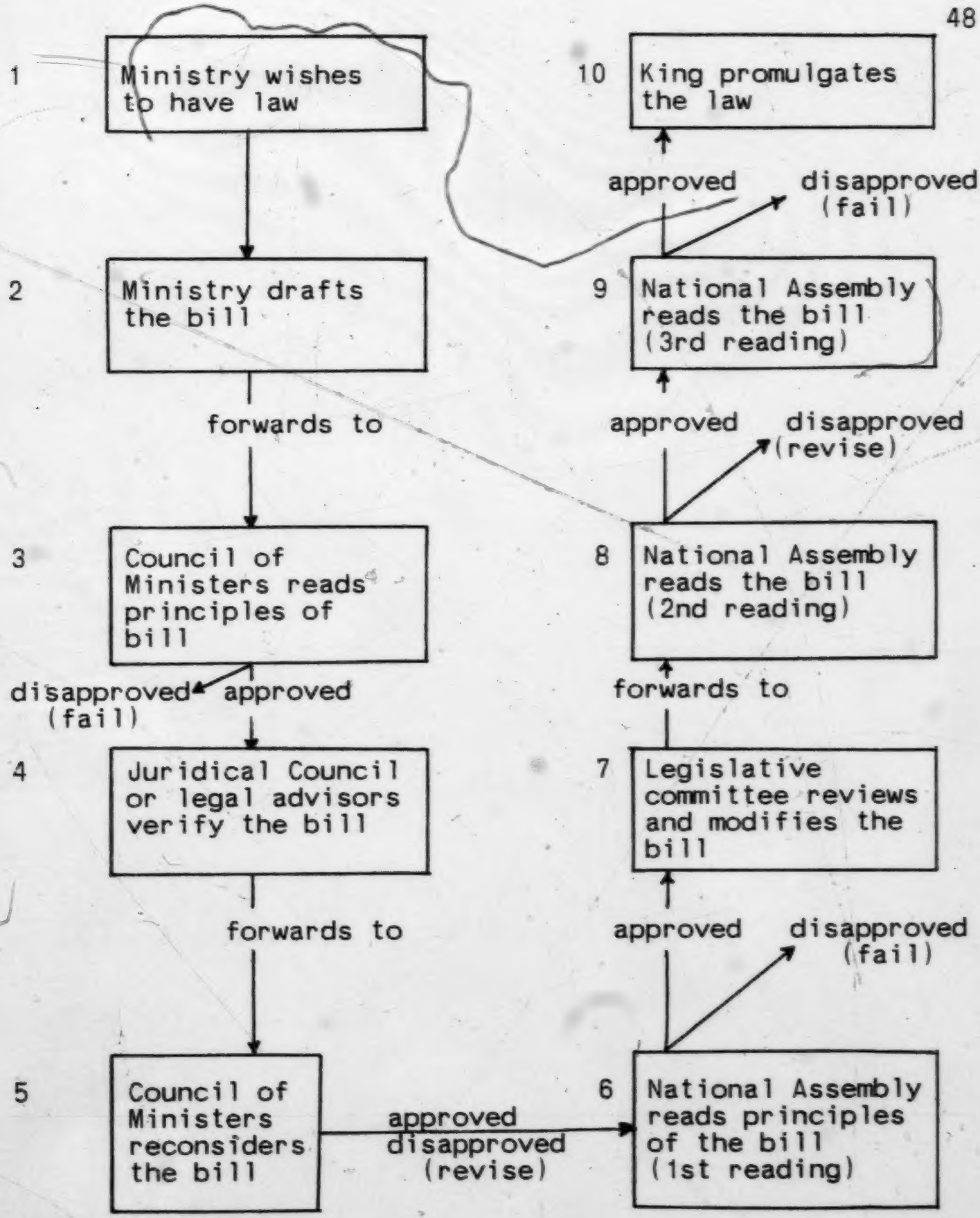
1
Ministry wishes to have law
2
Ministry drafts the bill
forwards to
3
Council of Ministers reads principles of bill
disapproved (fail)
approved
4
Juridical Council or legal advisors verify the bill
forwards to
5
Council of Ministers reconsiders the bill
approved
disapproved (revise)
6
National Assembly reads principles of the bill (1st reading)
approved
disapproved (fail)
7
Legislative committee reviews and modifies the bill
forwards to
8
National Assembly reads the bill (2nd reading)
approved
disapproved (revise)
9
National Assembly reads the bill (3rd reading)
approved
disapproved (fail)
10
King promulgates the law

Figure 1. The diagram shows ten steps of legislative procedure.

for principles of law and then draft the bill section by section. Also, the committee has to provide an explanation and support for each drafted section. In its search for supporting principles of the bill, the committee relies mostly on jurisprudence and politics. Enactment is the most time-consuming step. Some bills take more than two years to draft. For example, in drafting the bill concerning the revision of the Teachers' Act (1945), the committee started work in January, 1980, but had failed to complete its task two years later (Hasanee: 1982). The next two important steps are step 3 and step 6. In step 3, the Council of Ministers reads drafts forwarded by Ministries, then prioritize each draft. With regard to this step, Meechun (1967:64) explains that "most drafts initiated by Ministers are approved by the Council of Ministers. The problem is which draft is to be forwarded to the parliament first". The Council of Ministers attempts to pick the most appropriate and necessary one.

When the Council of Ministers is uncertain about the approval by members of the National Assembly, the Council of Ministers may convince the member of the parliament to introduce the proposed law to the National Assembly as a "private member's bill". For example, it was uncertain that the bill of the Civil Service Regulation Act (1975) would be approved by the National Assembly thus the Council of Ministers convinced a private member of the parliament to introduce the bill to the National Assembly.

In step six, the responsible Minister has to explain the proposed legislation and convince members of the National Assembly. His explanation and influence determine the success of the bill's acceptance by the National Assembly.

Enacment of Thai law is thus complicated. The law-maker wants to have the most reasonable, the most justifiable, and the least deficient law. Therefore, law-makers are required to followed several steps and are advised to enact only eminently acceptable law. The enactment of subordinate legislation is usually delegated to the executive or to the administration. Excluding the Constitution, Somsawat and Watanayon (1981:53) found that there are only four categories of law that are enacted by the National Assembly: the Royal Edict (Act), the Criminal Code, the Civil and Commercial Code, and the Law on Court Organization.

Custom and Tradition. Custom and tradition are not the law themselves. However, in the case where the written law is not provided, the court may rule on the case by applying Thai custom and tradition. More discussion on this topic will be provided in the upcoming section.

THE APPLICATION OF LAW

Somsawat and Watanayon (1981:78) assert that "the law, no matter how high the level of justice it deems to provide, if it is never used or is used improperly, will be meaningless to the establishment of social order." Thus the presence of good law is not the only factor that creates peace and maintains social order. The proper application of good law is also important. In this section, such concerns are addressed as: the enactment and the repeal of law, the law-user, and steps in applying the law. Finally, in order to delineate problems hindering the application of law in Thailand, the influence of beliefs and values on the application of Thai law is considered.

The Enactment and the Repeal of Law. It is generally required that the law be publicized before bringing it into force. The sovereign may choose different means. Setamarak (1975:98) explains:

> In former times, the sovereign publicized laws on stone inscriptions or copper plates then installed the stone inscription or copper plates in public places. However, presently, the Thai government chooses to publicize its law in the government gazette. The person cannot deny the accusation on the grounds of not knowing the law.

The publication of law in the government gazette, however, is limited to laws that are enacted by the National Assembly or the executive only. It does not require that laws enacted by self-governing organizations be so publicized.

In publicizing, it is necessary that the law designate its commencement date. Saeng-utai (1977:73) explains that normally the commencement date of the law comes immediately after the promulgation date, unless it is deemed urgent, where the sovereign may enact the law retroactively. An example is the Teacher Regulation Act (1980). This law was promulgated in the government gazette on October 13, 1980 but Section 2 of this law provides that the law take effect on October 1, 1980. Such retroactive law, however cannot affect the level of punishment for a previous offence for teacher since such a provision would contravene Section 26 of the Constitution of the Kingdom of Thailand.

Saeng-utai (1977:80-83) explains that there are five conditions that may lead to the repeal of each law:

1. The repeal date is stated in the law. This could be one year, two years, three years, ...
2. The previous provision contradicts a new enactment of the law in the same hierarchy.
3. The new enactment directly repeals the previous law. In this case, the new enactment will specify the law to be repealed under the enactment of the new law.
4. There is a new, better enactment.
5. The supreme law that subsumes the subordinate law is repealed.

The Law-user. Saeng-utai (1977:102) and Somsawat and Watanayon (1981:79) categorize law-users into three groups: 1) the people, 2) the responsible government official, and 3) the court. Somsawat and Watanayon (1981:79) explain that people are required to use the law when:

> The people have to use the law to protect their rights and to guide their ways of living. For example, if someone is tresspassed, he may use his legal right to protect his property. Or, as a farmer, he should know at least about the law guaranteeing the sale price of his farm products.

The adherence to the law by citizens is a great benefit to the executive and the society. Citizens at large may expect peace and happiness from good laws.

Another group of law-users are government officials who have responsibilities to guide and supervise people to adhere to the law. Such officials are police, immigration officers, custom duty officers, revenue officers, guard officers, military recruiting officers, the sheriff, the governor, etc. These officials are required to know the law so that they can perform their tasks effectively and trustworthily. In some cases (e.g.traffic laws), the responsible official can apply the law to the case directly without consulting with the court.

The final group of the law-users is the court of justice members. Kraivixian and Mahakun (1980:1) explain that

> "...in ruling on legal cases, judges are required to use and cite the law. They are supposed to provide justice to both parties, the plaintiff and the defendant".

In support of Kraivixian and Mahakun's explanation, Borerakchanyawat (1965:9) states "the court should take into account both legal justice and natural justice in deciding the case". He further explains the meaning of legal justice as (1965:4):

> Whatever stated in the law regarding components of the offence, the level of punishment, the cause of offence, the cause of punishment reduction, the court will rule on such cases accordingly. Rulings made by the court may be regarded or disregarded by the public.

With regard to natural justice, Kraivixian and Mahakun (1980:150) explain:

> Natural justice means real justice, and it always be regarded by the public. It is the justice that is based on fairness, faithfulness, and impartiality. Both parties are provided chances to generate evidence to support their arguments.

Natural justice is esteemed by most Thai citizens. Every litigant wants to see his case decided on the principle of natural justice. In order to provide natural justice to litigants, Kraivixian and Mahakun (1980:12) suggest that the court decide the case by considering precedents. Those who commit similar offending should be punished similarly. In order to do so, it is necessary that the judge study rulings of the supreme court and consider those rulings. However, since two individual offences may appear similar but differ in degree, judges should use the supreme court's rulings as a guide (but not to be bound to them). "The higher court ruling should have persuasive authority on judgment of the lower court" (Kraivixian and Mahakun, 1980:68).

In taking disciplinary action against government officials, the Civil Service Regulation Act (1975) provides that if it is a minor offence, the government official may be punished via a warning, probation, a salary reduction, or a salary demotion order without requiring an investigation. But, if it is a severe case, the government official may be punished more severely. The superordinate is required to name a committee to investigate the case before deciding the case. Further, it is also required that the supervisor document the procedure for his superordinate (up to the Ministry). After the investigation, if it is found that the accused teacher is guilty, the responsible supervisor will present the report to the Department Teachers' Subcommission for consideration. Whatsoever the subcommission decides, the responsible supervisor will be bound. After the issuing of the punishment order, the responsible supervisor is also required to report the investigation and punishment of that teacher to the Teachers' Commission for further consideration. The Commission may uphold the decision or alter it. However, the alteration of the punishment order at this level has to be done under the name of the Prime Minister. Also, the Civil Service Regulation #6 (clause 19,20) requires that:

> ...in the case where the investigating committee perceives that the government official might have committed another offence beside the one being investigated or that there are some other government officials participating in that offence, the committee shall report that offence to the superordinate for further investigation.

In making decisions concerning the level of punishment in disciplinary cases, the Civil Service Regulation Act 1975 provides that the supervisor is the one who has authority to decide the case. The court has no legal power to interfere in disciplinary actions taken against the teacher by his supervisor. The court has no power to order the supervisor to reappoint the unjustly dismissed teacher to his former position. However, if an individual teacher perceives injustice in the discharging of power by the superordinate, that official may bring the case to the court and sue the supervisor on the grounds of "unjust practice and damages to an individual" which is considered a criminal offence (The Criminal Code: Section 157).

Steps in Applying the Law. Saeng-utai (1977:103) claims that there are four steps to be followed in applying the law: 1) identifying the case, 2) studying the law relating to the case, 3) interpreting the law relevant to the case, and 4) deciding the case.

1) Identifying the case. Saeng-utai (1977:103) suggests that the law-enforcer may identify the case by looking at the statement of accusation, evidence, and support. In this step, the law-enforcer would be able to see what the accusation is about (e.g. bank robbery, rape, sale of property, etc).

2) Studying the law relating to the case. Kraivixian and Mahakun (1980:216) suggest that, in studying the law relating to the case, the law-user is advised to study both provisions of general law and provisions of specific laws.

For example, a teacher disciplinary case regarding immorality can be referenced in both the Civil Service Regulation Act 1975 and the Teacher Council Regulation Concerning Teacher Discipline 1963.

Saeng-utai (1977:104) suggests that, in studying related laws, the law-enforcer focus on the definition of the offence. For example, if the offending is concerned with stealing, the law-enforcer will study all laws concerning stealing and aspects of stealing.

3) Interpreting the law to the case. Kraivixian and Mahakun (1980) call this step "the law interpretation". They also explain that the law-enforcer does not need to interpret the law if that law is already clearly stated. Instead, the law-enforcer may apply the law to the case directly. In the case where both the definition of offending and the provision of law are not stated clearly, the law-enforcer will have to interpret the law. In searching for the definition and the intention of Thai law, Saeng-utai (1977:108) suggests that the law-enforcer search for the definition and the intention of law from the law itself. The law-enforcer should interpret the language used in a general sense, except those which are technical or special terms which have technical or special meanings.

4) Deciding the case. In this step, the law-enforcer will decide the case. The law-enforcer will let the accused party know whether or not he is guilty or innocent, and if he is guilty, what level of punishment he will receive. Borerakchanyawat (1965:4) explains that normally the judge rules on the case on a legal basis. The person will receive a punishment as it is stated in the law. However, the law provides that the judge may use his discretionary power in deciding the level of punishment. For example, in criminal cases, Section 56 of the Criminal Code provides that in deciding the case the court should take into consideration-age, general background, educational background, previous conduct, intelligence, health, state of mind, habits, occupation, home environments, and so forth, prior to sentencing. Accordingly, "the judge may decide upon a reduced sentence, although the sentence may not be reduced more than half of that provided for by law (The Thai Criminal Code: Section 56)".

The application of law mentioned is mostly concerned with the application of law in a general sense. In the case of teachers, Songchai Saihong (1982) and Derek Somaya (1982) explain that Legal Sections attached to Departments in the Ministry of Education follow Civil Service Regulation #6 in processing teacher disciplinary cases. Whenever the teacher is accused, the authorized supervisor names the committee to investigate the case. This committee collects and summarizes the evidence. Then the committee proceeds with the second step -studying related laws. It then restates the allegation and reports to the appropriate superordinate.

The superordinate, after receiving the report, names another committee to investigate the case. He names the chairman of the committee and the committee members, and specifies official positions of individual committee members. Along with the naming order, the superordinate forwards the statement of allegations and evidence to the accused teacher and to all committee members. The chairman of the committee may call for a meeting before the commencement of the investigation. On the first day of the investigation, the committee will disclose the statement of allegations then ask the accused teacher whether he wishes to plead guilty or not guitly. If the accused teacher denies the allegation, that teacher will be asked to present support or evidence of his innocence and set date for the next meeting. Subsequently, after receiving the pertinent evidence, the committee summarizes offences and recommends the level of punishment of the offender(if guilty) to the superordinate for further decisions.

In deciding the level of punishment, Section 85 and 86 of the Civil Service Regulation Act (1975) do not specify causes of punishment reduction. The act states only that the superordinate may use his discretionary power to reduce the level of punishment.

INFLUENCE OF BELIEFS AND VALUES ON THE APPLICATION OF LAW

There are three categories of belief and value that might affect the application of law in Thailand: 1) the belief in the Karmic cycle of rebirth, 2) *Kuamwangcheya* (impartiality, indifference, or equanimity), and 3) the patron-client structure.

The Belief in the Karmic Cycle of Rebirth.

The belief in the Karmic cycle of rebirth is adopted from the Buddhist sermons which state (Intasa, 1981:100):

> All living things have their own Karma and also receive results of Karma which they have stored from their previous lives. Karma is the origin of individual life. Karma is the relative and friend of individual. Individual is dependent on his/its own Karma. Karma differentiates one living thing from another.

According to this sermon, it is understood that the future of any individual is directed by his own Karma. Richness, poorness, recognition,... are all the result of individual's Karma. Tepsitta (1981:40) further explains the law of Karma as:

> One who performs good deeds will receive good results. One who perform bad deeds will receive bad results. Therefore, things that differentiate an individual from one another such as richness, poorness, reputation, happiness, and sadness are all the result of individual Karma. Any deed which is committed or performed by an individual, no matter it is a bad or good deed, the result of that deed will follow that individual like a shadow following a person or the cart following the wheel. Karma may produce results sooner or later.

Karma follows its owner everywhere. Some Kinds of Karma produce immediate effects but some of them produce long-range effects (i.e. the result of Karma may be seen in one's life time or in one's reincarnation).

According to the law of Karma, Karma is transmitable. It may be transmitted from previous lives to this existence. Or, it may be transmitted from this life to the next. Karma can produce results cyclically. Therefore, one who wishes to be born wealthy, famous, a genius, and have followers, needs to store meritorious Karma (i.e. Karma that leads to merit) and avoid demeritorious one.

As a result of the belief concerning the law of Karma, most Thais (over 90 per cent are Buddhists) are satisfied with their own fate. They believe that the reputation they gain, the property they own, and the wealth they possess are the result of their previous Karma. Some have committed no offence but may be accused and punished as a result of their own Karma. Some have not performed any good deed but may be promoted to a high position and awarded money and valuable things as a result of their previous Karma. Some have performed many good deeds but may be demoted and punished as a result of previous Karma, which in this case is more influential than the present one.

The belief in Karmic law leads most Thais to avoid creating pain or suffering in others. In governmennt organizations, the superordinate may observe the violation of law but be reluctant to take disciplinary action against the subordinate since he believes that the action could create pain or suffering in the subordinate. Let the law of karma punish the offender, he thinks. Similarly, the teacher who does not adhere to Buddhist sermons and does not believe in karmic law may violate the law and bring disorder to the teacher community.

Kuamwangcheya. (impartiality, indifference, or equanimity). *Kuamwangcheya* derived from the four noble truths discovered by Buddha about 2570 years ago. In his sermon, Buddha asserts (Engel, 1978:64):

> Now this, monks, is the noble truth of pain: birth is painful, old age is painful, sickness is painful, death is painful, sorrow, lamentation, dejection, and despair are painful, contact with unpleasant things is painful, not getting what one wishes is painful. In short the five groups of grasping are painful.

To end one's pain, Lord of Buddha states (Engel, 1978:64):

> ...by bringing to an end the craving and desires that are a part of human existence, through abandonment, forsaking, release, and non-attachment. This could be achieved by following the eight fold path of right view, right intention, right speech, right action, right livelihood, right effort, right compassion, and right concentration.

As a result of believing in Buddhist sermons (concerning definition of life and the way to respond to pain), coolness, politeness, and non-assertiveness are created in most Thais and are characterized as their innate personality. Most Thais believe that one who possesses a "cool heart" will be able to retain his psychic equilibium in the face of all kinds of adversity. Engel's statement explains this personality (Engel, 1978:64):

> By remaining tranquil when his rights are infringed upon, he reveals not only his maturity but his merit, for equanimity is an outward sign of the meritorious person.

As a result of being cool, polite, and non-assertive, most Thais seldom retaliate no matter that their rights are infringed upon by others. They dislike to create pain. They prefer peace and non-involvement. Within government organizations, *Kuamwangcheya* relatively affects the operation of such organization. Many superordinates observe the violation of official rules by the subordinate but are reluctant to impose their legal power to punish the violator since they realize that such action could lead to termination or dismissal and thus create pain for the subordinate. Those superordinates who cannot tolerate the violation of rules by subordinates may call the subordinate in and provide some advice but avoid naming the committee to investigate the case. It can be seen in Departmental files that most cases investigated are brought to the superordinate by external accusers. Although about 400 to 500 cases were brought to the Department each year, only about 100 cases were recorded in the Department's file (Department of General Education's List of Disciplinary Cases 1979-1981). In some serious disciplinary cases, it can be observed that the superordinate undertakes mediation even though such disciplinary procedure is not included in the provision of the Civil Service Regulation Act.

__The__ __Patron-client__ __Structure__. The patron-client structure is a prominent characteristic of Thai society. Hanks (1972:87) explains the development of this relationship below:

> What then does kinship mean? Certainly it does not specify the duties and expectations within a fixed group bound together as flesh and blood. According to the Thai, who draw on Buddhist tradition at this point, the body is mere nails, bone, hair, fluids, and so forth. Only the soul, which enters during the period of gestation, give distinguishing characteristics. What is registered as amiable by two souls binds them together. Mutual experience begins with child and mother, first within the mother's body, then in the time of nursing and rearing. Growing up in the same household brings mutual experiences to the household members; so can attending school or serving in the same military company. When husband and wife feel particularly compatible, some say that they have shared experiences in a previous existence. Yet to fix and hold these possible connections requires some special expression of love, the giving of a gift and its reciprocation. The mother, giving her own food and body to a child, shows her love. So a sibling or a school mate with some smaller gift may also capture and hold the love of another. Then, depending on the relative age, sex, nature of the gift, and feeling of mutual confidence, the two, bound by amiable experience, are called parent and child, uncle and nephew, older and younger brother, or husband and wife. Kinship is psychic rather than physical.

The term 'kinship' is not limited only to those who are related to each other by flesh and blood. Kinship may develop in school, in military company, at work, or at social activities. However, Engel (1978:70) explains that this type of kinship seldom joins two individuals who are equal in age and status when he states:

> Reciprocal exchanges can lead to the formation of a bond between two individuals, but this alliance will seldom join two persons who are equal in age and status. From the beginning of a relationship there will be a delicate probing to determine who is older, who graduated first and from what school, what are the respective family backgrounds and social positions. Once these factors are established, the uncertainty will vanish and the individual can settle comfortably into a relationship based upon acknowledged status differences between the two participants.

Upon knowing the age and status of one another, the two participants can determine their relationship. Generally, those who are older, richer, and better educated are more likely to be regarded as the leader automatically. Those who are younger, poorer, and lower educated are more likely to categorize themselves as followers. This relationship is not static. It diffuses like the chain reaction from two participants to four participants and finally will become a larger human unit where members of the unit recognize and respect each other. As it grows, the unit gains its persuasive power from other units or the society thus protecting its members politically and financially. The leader acts as a patron while the follower acts as a client. The larger the size of the unit, the greater the influence of the unit will be.

Within the unit itself, members assist each other and exchange gifts, cards, friendship, and services. The client may serve his patron by performing tasks assigned to him by the patron. In return, the patron may provide protection to their clients or help them to achieve their desired goals.

With regard to this, Engel (1978:72) explains:

> The client performs personal services for the patron wholly unrelated to his formal work responsibilities, and is available at any hour of the day or night. The patron, in turn, offers a broad protection to his client, placing his wealth and influence in opposition to social forces that might otherwise overwhelm him. Among the forces from which the patron shields his client are the requirements of the government bureaucracy and the mandates of the law.

In government and teacher organizations, the patron-client structure is more prominent. The superordinate, within his jurisdiction, has discretionay power to promote his subordinates to higher ranking positions. It has been long accepted that one who does not have close connections with the superordinate will not be very successful in official life.

SUMMARY

Before the revision and the compilation of law in the King Rama V period, the Thai legal system relied heavily on Buddhist jurisprudence. Kings of Sukhothai, Lanna, Ayuthaya, and early Bangkok employed mostly Buddhist jurisprudence for reference in deciding legal cases. Where Buddhist jurisprudence was inapplicable, the King decided the case by using his own intelligence. People of Sukhothai, Lanna, Ayuthaya, and early Bangkok were pleased with their Kings and their legal systems.

After the revision and the compilation of law in the King Rama V period, the Thai legal system became more structured. The offences, components of each offence, and the level of punishment for each offence were stated more clearly. Most Thais understood law in more modern terms. They began to realize that all Thais regardless of their positions were subject to the law. One who violated the law had to be punished accordingly.

After the seizure of power in 1932, the enactment, the interpretation, the application, and the enforcing of law were transferred from the King to designated persons. The National Assembly has taken responsibility in enacting supreme laws. The people, the officials, and the courts are to use and interpret the law while the executive are to enforce the law. Thai law thus became more reasonable and provided better justice to the people.

With regard to government officials, the eleven commissions responsible for personnel administration of different groups of government officials were set up. However, in practice, most commissions develop the guidelines for practice then hand down the guidelines to the executive. The commission rarely interferes with the internal administration of the executive, especially, in disciplinary cases. The vesting of discretionary power in the superordinate leads most subordinates to believe that the close connection with and the respect for the superordinate could, under circumstances, protect them from disciplinary actions or at least help them to receive punishment reduction.

In general, one might say that the enforcement of law in Thailand, currently, is not generally successful. Officials who do not adhere to Buddhist sermons and are not aware of Karmic beliefs dealing with "demerit" tend to violate laws and regulations and thus to bring disorder to the government official's community. On another side, the superordinate who believes strongly in the Karmic law tends to avoid imposing the law even though he observes the violation of law by subordinates. Further, the patron-client structure, which is very prominent in Thailand, is another hindrance that impedes the enforcement of law by some superordinates. The disregard of law by the superordinate or/and the subordinate means that the enforcement of law becomes more complicated and less effective.

CHAPTER IV

LEGAL JURISDICTION OVER THAI TEACHERS

INTRODUCTION

As a government official, the teacher is subject to laws, rules, regulations, and circulars enforced by the government. At present, the writer finds that there are four major laws which have direct control over Thai teachers: 1) the Teachers' Regulation Act (1980), 2) the Teachers' Act 1945 (revised 1980), 3) the Revolutionary Party Promulgation #218, and 4) the Civil Service Regulation Act 1975. In addition to these acts, Thai teachers are also subject to provisions in the constitution, the Revolutionary Party Promulgation #216, government circulars, and some other related laws. In this chapter, the writer discusses the effect of these laws and circulars on Thai teachers in terms of: 1) legal relationships between teachers and related organizations and 2) legal relationships between teachers and other persons.

THE CONSTITUTION

The constitution is the highest form of law. It states regulations concerning the exercise of sovereign power. With regard to this, Section 3 of the present Constitution of the Kingdom of Thailand states:

> The sovereign power emanates from the Thai people. The King, who is Head of State, exercises such power through the National Assembly, the Council of Ministers, and the court of justice and under the provisions of this constitution.

This section does not specify categories of sovereign power. However, under Section 76, 146, and 169, we may conclude that sovereign power is divided into three facets and that they are exercised by the King through different means. Section 76 of the Thai Constitution states that "Bills of law shall be enacted only by advice and approval of the National Assembly". Further, Section 125, which is concerned with the initiation procedure of the bill, states:

> Bills can only be initiated by the Council of Ministers or members of the House of Representatives. No money bills may, however, be initiated by members of the House of Representatives unless endorsed by the Prime Minister.
>
> The initiation of the bill by the member of the House of Representatives requires that such initiation be upheld by the political party of such member and by the approval of at least twenty Representatives of that party.

Although Representatives have power to initiate the bill, by tradition, they rarely exercise such power. Most administrative bills are initiated and drafted by the Council of Ministers. Representatives are only to read and approve or disapprove the bill. The Council of Ministers initiates it.

With regard to executive power, Section 146 of the constitution states: "the King appoints the Prime Minister and Ministers, not more than 44, composing the Council of Ministers which is responsible for the execution of state affairs". Further, to provide guidelines to executives, Section 152 of the constitution states "In the execution of state affairs, it is required that the Minister be responsible for policies presented to the National Assembly." The Minister cannot lead and direct his Ministry on his own will but instead has to follow policies included in Section 53-73 of the constitution.

To protect government officials from unjust discharge of power by the Minister, Section 165 and 166 state:

> Section 165- The King appoints and removes officials of military and civil services of the positions of Permanent Secretary, Director-General, and the equivalent thereof.
>
> Section 166- Under the provision of Section 165, the determination of qualifications, instatement, appointment, removal, and punishment of officials shall be in accordance with provisions of the law.

The two provisions protect officials from unjust discharging of power by the executive. The executive has to adhere to the legislation.

The last category of sovereign power is judicial power. In regard to this power, Section 169 of the constitution notes:

> Section 169- The trial and adjudication of case is an exclusive power of the court, which must be in accordance with the law and in the name of the King.

Judges of the court have autonomy to rule on the case in accordance with the law legislated by the legislature. They are free from control and supervision of politicians or the executive. Further, the appointment, the promotion, and the removal of judges are not under control of the executive. They are controlled by the Judicial Committee which is composed of Representatives of judicial persons.

The inclusion of rules concerning the discharge of sovereign power is to protect each individual power holder from infringing upon the territory of other power holders, which might jeopadize national security and impede the continuing progress of the nation.

In the past, however, conflict in the discharge of power occured most often between the executive and the legislative arms of the government. The executive sometimes felt that the legislative arm impeded the discharging of executive power. Similarly, the legislative arm sometimes felt that the executive arm discharged power beyond the provision of the law. This contradiction many times led to the serious misunderstanding between the two power holders. Therefore, the executive arm , which was responsible for the maintanance of national stability, solved such conflicts by recommending that the King dissolve the House of Representatives. When this tactic failed, the military, which is responsible for the protection of national independence, security, and benefits, stepped in and named another group of persons to rule the country. A new bill of the constitution was initiated. A general election was held. A new government was formed. New types of conflict and contradictions arose. Finally, another coup d'etat took place. This was the Thai government cycle.

To avoid this conundrum, the present constitution of Thailand gives priority to the protection of national security. Explanation by the President of the drafting committee below should clarify this position (Tingsapat, 1978:2):

> This constitution aims at the resuscitation of national economics, social order, and citizen harmony. It also purports to bring in happiness and coolness to Thai people, to develop better relations between this nation and other nations, and to develop internal and external security in this nation.

The explanation reminded Thais that, in drafting and reading the bill of the constitution, members of the legislative committee and the National Assembly were supposed to realize two important things: 1) democratization and 2) national security. Most members of the National Assembly realize that the "democratic" government could hardly be viable if the nation lost its security, therefore national security was paramount. However, to prevent the enactment of subordinate law that might restrain basic rights of individuals, the Thai constitution includes provisions concerning rights and liberties of the Thai people. Those which are related to the present study are:

> Section 23- All persons are equal before the law.
> Titles acquired by birth, bestowal, or any other manners do not create any privilege whatever.

Section 26- No person shall suffer criminal punishment unless he has committed an act which the law in force at the time of its commission provides it to be an offence and imposes a punishment therefor, and the punishment to be inflicted on such person shall not be heavier than that provided by the law in force at the time of its commission.

Section 27- In a criminal case the alleged offender or the accused shall be presumed innocent.

Before the passing of a final judgment convicting a person of having committed an offence, such person shall not be treated as a convict.

Section 28- Every person enjoys full liberty of the person. No arrest, detention or search of a person under any circumstances whatever may be made except by virtue of law.

Section 30- In a criminal case, if a person is judged as an offender but later found that that person is innocent, he is entitled to receive compensation in accordance with the law.

Section 31- Forced labour may be imposed only by virtue of the law specifically enacted for the purpose of averting imminent public calamity or by virtue of the law which provides for its imposition during the time when the country is in a state of armed conflict or war, or when a state of emergency or martial law is declared.

Section 34- Every person enjoys full liberties of speech, writing, printing, and publication.

Restriction on such liberties may only be imposed by virtue of the law specifically enacted for the purpose of safeguarding the liberties of other persons, avoiding a state of emergency, maintaining public order or good morals, or protecting young persons from moral degeneration.

The owner of a newspaper must be a Thai citizen in accordance with the law.

No grant of money or other property may be made by the state as subsidy to a private newspaper.

Section 35- Every person enjoys full liberty of education, provides that such education is not contrary to his civic duties under the law on education and the law on organization of educational establishments.

Section 36- Every person enjoys full liberty to assemble peacefully and without arms.

Restrictions on such liberty may only be imposed by virtue of law only in the case of public meetings, and for the purpose of ensuring conveniences for the public in the use of public places or of maintaining public order during the time when the country is in a state of armed conflict or war, or when a state of emergency or martial law is declared.

Section 37- Every person enjoys full liberty to form an association, a federation, a union, a cooperation, or any other types of grouping.

The formation and the management of association, a federation, a union, or a cooperation are governed by law.

Section 38- Every person enjoys full liberty to form a political party for the purpose of carrying out political activities through democratic means in so far as they are not contrary to the form of government under the constitution.

The formation and the management of a political party are governed by the law concerning political parties.

Section 42- Every person has the right, either by himself or in connection with others, to present a petition under the conditions and in the manner provided by law.

Section 43- The right of a person to sue a government unit, which is a juristic person, for the liability for an act done by its official, as principal or employer, is guaranteed.

> Section 44- Members of the armed forces, the police forces, and other government or local government officials, enjoy such rights and liberties as accorded to the people under the constitution unless they are limited or restricted by law, or regulation issued by virtue of law in so far as it concerns political activities, efficiency, or discipline.

These provisions caution the executive not to enact laws that remove rights and liberties under the constitution of the Thai people.

The constitution is the highest law. It is the law that vests enforcing power in other subordinate laws. The Constitution of the Kingdom of Thailand 1978 states that the Council of Ministers is reponsible for the administration of the state's affairs. However, it does not specify clearly how to administer such affairs. Therefore, in practice, the executive is advised to initiate bills concerning regulations on the administration of state affairs. Some of the laws in this category are discussed below.

THE REVOLUTIONARY PARTY PROMULGATION #218

The Revolutionary Party Promulgation #218 was issued on September 29, 1972. It is the law that specifies regulations concerning the administration of state affairs. The law divides state affairs into three levels (Clause 42): 1) the central office, 2) the decentralized central office, and 3) the municipality.

The central office is responsible for the administration of state affairs at the state level.

According to Clause 5 of this promulgation, the central office consists of the Office of the Prime Minister, Ministries, State Bureaus, Departments, and other equivalent offices.

The decentralized central office is responsible for the administration of state affairs at the provincial and the district level. The decentralized central office performs tasks that are assigned by the central office. Clause 47 of this law states that the decentralized central office consists of provinces and districts. (Currently Thailand has 73 provinces and about 580 districts).

The municipality is responsible for the administration of state affairs within its municipality. It is the government body that has no control over the administration of teacher therefore it is excluded from this discussion.

Although state affairs are divided into several levels, these levels are inter-related. The Office of the Prime Minister is responsible for the administration of routine jobs of the Prime Minister and the Council of Ministers. Each Ministry is responsible for the administration of jobs assigned to it by the cabinet. The Department is responsible for the administration of jobs which are assigned to it by the Ministry. The province is responsible for the administration of jobs assigned to it by the Office of the Prime Minister, the Ministry, or the Department. Finally, the district is responsible for the administration of jobs assigning to it by the office of the Prime Minister, the Ministry, the Department, or the province.

With regard to the administration of teachers, teachers are central office officials. They are controlled and supervised directly by the Department they are attached to. For example, the secondary school teacher is controlled directly by the Department of General Education while the elementary school teacher is controlled directly by the Office of National Elementary Education. However, in many cases, the Department delegates its control to the Governor of the province where the school is located. With reference to this promulgation, the personnel administrative structure of teachers can be divided into four levels: 1) the national level, 2) the Ministerial level, 3) the Departmental level, and 4) the provincial level.

The Administration of Teachers at the National Level. At this level, the Prime Minister, who is Head of the executive, has power to control all government officials, including teachers. Clause 9 of this promulgation lists responsibilities of the Prime Minister below:

1. The Prime Minister may control and supervise, in general, state affairs. For such purposes, the Prime Minister may order the central office, the decentralized central office, and the municipality to make reports concerning success or failure of its operation to the Prime Minister. If necessary, the Prime Minister may order the repeal of any operation offensive to the cabinet -approved decision. The Prime Minister has authority to order an investigation into practices of the central office, the decentralized central office, and the

municipality.
2. The Prime Minister may delegate his authority to the Deputy Prime Minister(s).
3. The Prime Minister is the top superordinate of all officials who hold administrative positions in Ministries, Departments, or other equivalent government organization units.
4. The Prime Minister may order a transfer of any government official from one government unit to another government unit. For such purposes, the transferred official may receive payment from the original government unit or from the Office of the Prime Minister. But, the payment received must not be higher than the previous one.
5. The Prime Minister may appoint a government official attached to the Ministry or Department to the position in another Department. For such purposes, such an official may receive payment from the previous office and enjoys full rights in the new office. However, the appointment of the Director-General or other higher or equivalent position requires approval from the Council of Ministers.
6. The Prime Minister may appoint the Chief advisor and advisors to the Prime Minister. The Prime Minister may determine compensation for these advisors.
7. The Prime Minister may appoint political officials to the Office of the Prime Minister.
8. The Prime Minister may order all kinds of undertakings to implement government policies.

These responsibilities empower the Prime Minister to order the transfer, promotion, appointment, and so forth, of teachers in all Departments. Further, Clause 9(8) includes very broad responsibilities. It authorizes the Prime Minister to issue orders, to promulgate regulations, or to shuffle positions of teachers if it is perceived the activity could lead to better success of policy implementation.

The Administration of Teachers at the Ministry Level.

Clause 21 of this promulgation states:

> The Minister is the superordinate of all government officials in the Ministry. He is responsible for the administration of state affairs assigned to the Ministry. The Minister may delegate his administrative power to the Deputy Minister.

In addition to the Minister, Clause 22 of the promulgation lists powers of the Permanent Secretary:

> The Permanent Secretary is responsible for the administration of routine jobs of the Ministry. He controls, supervises, directs, and evaluates performance of Ministry officials. He is the superordinate of all officials in the Ministry below the Minister. The Minister may name the Deputy-Permanent Secretary to assist the Permanent secretary.

Although the Permanent Secretary is positioned under the Minister, in practice, the Permanent Secretary is a very powerful person. He has legal power to make recommendations concerning the appointment and promotion of the Director-General of the Department. In regard to the legal status of teachers, Section 92 of the Civil Service Regulation Act 1975 states:

> After the issuing of an investigation or punishment order, the responsible superordinate needs to report the order to senior superordinates respectively up to the Permanent Secretary. In the case where the accused official holds the position not lower than Class 10 or where the accused official serves in the Office of the Prime Minister or the Office of the Minister, the responsible superordinate needs to report such an order to the senior superordinate respectively up to the Minister.
>
> Further, where appropriate, the higher superordinate may alter orders made by the junior superordinate. However, such alteration must be done in accordance with the law.

The provision requires that the superordinate report the punishment and the investigation order to the Permanent Secretary or the Minister accordingly. In the case of teachers the punishment and investigation order are reported to the Permanent Secretary only. Therefore, in reality, the Permanent Secretary has important control over the determination of the legal status of teachers. The following disciplinary case exemplifies this control.

> **Mrs.L's case.** *Mrs.L was investigated on the ground of violating the regulation concerning pupil punishment. She used a metre stick to punish ANN, her grade 9 pupil, on his head just over his left ear on January 22, 1979. ANN's mother brought the case to the Provincial Education Officer.*[8] *Before the Provincial Education Officer, Mrs.L explained that ANN refused to copy an exercise from the board to his own exercise book and thus made her furious. Mrs.L also explained that she did not know the regulation concerning pupil punishment. After being warned by the Provincial Education Officer, Mrs.L promised that she would not punish pupils with the meter stick.*
>
> *On January 29, 1979, Mrs.L again punished ANN on his forehead with the same metre stick. This time, the punishment caused more pain. Mrs.Tow, ANN's mother, took the case to the Police and the Provincial Education Officer. The police fined Mrs.L 50 baht ($2.50 approx). The Provincial Education Officer reported Mrs.L's case to the Governor and thereafter a committee was named to investigate the case. Before the committee, Mrs.L admitted that she punished ANN on his head twice. The first one was done out of ignorance. For the second punishment, Mrs.L argued "that she was pregnant and very angry, that ANN was standing in front of her and could be reached only by the metre stick, and that the punishment was only to instruct and to prevent imitation by other*

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[8] The provincial Education Officer is equivalent to the superintendent of schools.

pupils".

The committee argued that Mrs.L violated the Regulation Concerning Student Punishment 1972 and the Regulation Concerning the Control of Student Conduct Issuing Under the Revolutionary Party Promulgation #132 and that Mrs.L should receive a three-month 10 percent salary cut. The Governor, after reviewing the case, perceived that Mrs.L should be demoted, he therefore issued a one step salary demotion.

After issuing the punishment order, the Governor reported the punishment order to the Director-General of the Department of General Education. The Director-General, after reviewing the report of investigation, perceived that the punishment by Mrs.L was done in good faith and it aimed at instructing ANN to become a good pupil. He therefore issued a four-month 10 per cent salary reduction rather than the more serious demotion. In the alteration, the Director-General argued "Mrs.L was pregnant and about to give birth to a baby so that she should be awarded some punishment reduction".

After the alteration of the punishment, the Director-General reported the punishment to the Permanent Secretary. The Permanent Secretary argued that "the use of metre stick to punish pupils was the violation of the Ministry of Education Circular #ST 7755/2506 dated April 16, 1973 which states that such a punishment is excessive and that the teacher who violates the circular be put out of service." However, after considering punishment reduction factors, the Permanent Secretary decided that Mrs.L receive a one-step salary demotion then issued the punishment order accordingly.

Mrs. S's case. *Mrs.S was investigated on the grounds of organizing illegal shares for her deceased father. After the investigation, the committee found that Mrs.S acted as a share organizer for her deceased father and also organized two other illegal shares. When the shares collapsed, Mrs.S refused to pay back to or to collect payments for shareholders who have not won the bid.*

The committee argued that Mrs.S violated the Ministry of Education's Order #38/2473 dated July 6, 1930 which bars government officials from participating in illegal shares. The order also states that the violator of this order must be put out of service. In deciding the case, the committee explained:

> Mrs.S is ignorant in committing such an offence. In addition, such an offence is considered an expression of gratitude to her father. Further, in the past, Mrs.S was an industrious teacher and never committed any offence; she therefore is entitled to some punishment reduction.

After considering punishment reduction factors, the committee recommended that Mrs.S receive a two-step salary demotion instead of being put out of service. The Governor regarded the recommendation but since such a punishment level was beyond his power he therefore conveyed the recommendation to the Director-General. The Director-General argued:

> The Department disagrees with the recommendation made by the committee. The Ministry's Order cited above has been in force for almost 50 years, therefore it should be obsolete. In addition, recently, the Circular #NW 12/1955 dated January 15, 1955 circulated by the Council of Ministers states only "that officials (teachers) are required not to participate in illegal shares" but the circular does not specify the level of punishment of the offender. The implication is that the superordinate has discretionary power to decide the case.
>
> Further, it should be realized that changes and progress have been brought to our society and that the supreme court has ruled that "the organization of share is legal. It is a contract, and does not create unrest, disorder, or immorality in citizens (the Supreme Court's Ruling #2235/1975)", therefore Mrs.S should not be prevented from participating in the share. It is a personal matter. However, since the Council of Ministers #NW12/1955 is still in force, therefore Mrs.S has to receive some petty punishment.

After reveiwing the case, the Director-General of the Department of General Education issued the probation to Mrs.S then reported the case to the Permanent Secretary (Department of General Education Order#481/1980 dated January 28, 1980). The Permanent Secretary argued "the level of punishment recommended by the Governor is too *excessive, the probation issued by the Director-General is too petty". The Permanent Secretary therefore issued a four-month 10 percent salary cut back to Mrs.S (The Office of the Permanent Secretary Order #SP 137/1980 dated March 19, 1980).*

The Administration of Teachers at the Department Level. Clause 32 of the Revolutionary Party Promulgation #218 states:

> The Department is responsible for the administration of State affairs assigned to it by the Ministry or as specified in the law concerning responsibilities of the Department.
>
> The Director-General is the top superordinate in the Department and is responsible for the execution of state affairs assigned to it by the Ministry. The Minister may name the Deputy Director-General to assist the Director-General.
>
> The Deputy Director-General is responsible for state affairs assigned to him by the Director-General.

In practice, most Departments have at least one Deputy Director-General or one Assistant Director-General. This person normally acts as the superordinate of officials in the Department below the Director-General. In addition to the Assistant Director-General, most Divisions attached to the Department have a Director of the Division to control, supervise, direct and evaluate performance of officials in the Division.

With regard to teachers, primary superordinates of teachers have a variety of possible titles: School Principal, Director of the School, Director of the College, or the Rector of the College. The teacher who is appointed to the school principalship becomes Head of the institution and the superordinate of teachers under this promulgation.

Since many schools are large and cannot be supervised thoroughly by a single school principal, the Director-General may name some teachers to act as Deputy School Principal, Academic Branch Head, Academic Faculty Chairperson, or Academic Department Head. These persons act under the authorization of the Director-General.

In most Departments, the Director-General has the power to determine the legal status of teachers. He has legal power to issue Department orders, Department regulations, and guidelines for practice. In many cases, the Permanent Secretary prefers to delegate responsibility for the practices and operations of the Department to the Director-General. The Director-General therefore has some influence in determining the legal status of teachers in his Department. The Director-General who strictly adheres to the supreme law makes the Departmental subordinate laws more strict and rigid. The Director-General who loosely adheres to the supreme law may make the subordinate law more flexible. Prajuab Saeng-in (1982), Director of the Legal Division attached to the Office of the Permanent Secretary illustrated the rigidity and flexibility of laws enacted by Departments as follows:

> Yes, the Department may revise regulations concerning educational expenditure. Departments may do it. In fact they can do it now. But schools cannot do it. There is an approved decision of the Council of Ministers saying that the government organization (including schools) may provide welfare to its officials by using money secured from its own business,

> for example, from selling food, books, and writing materials. In running the business, the government organization may use its own location, personnel, and utilities as appropriate. This decision was circulated two years ago. At the Ministry level, we have debated on this. Samarn Saengmalee was the Chairman of that debate and I was the Secretary. Participants in that meeting agreed that each Department should draft its own regulation concerning this matter and convey the draft to the Ministry for promulgation individually. However, the Department of General Education has not drafted this regulation yet. I reminded the Department many times, but the Department has not given the draft to me. That is why teachers in this Department, especially school principals, have difficulties in spending their educational fund.

The Administration of Teachers at the Provincial Level. Clause 50 of the Revolutionary Party Promulgation #218 states:

> In each province, the Governor is responsible for the implementation of state policies handed down to it by the Prime Minister, the Council of Ministers, Ministries, Departments, and Government Bureaus. The Governor is the superordinate of all administrative positions at the provincial level. He is responsible for the administration of all public services at the provincial and the district levels.

According to this provision, the Governor is not the superordinate by law of teachers who are central office officials. However, in practice, most Departments attached to the Ministry of Education delegate supervising power, to some extent, to the Governor. In disciplinary cases, especially, the Governor has power to determine the level of punishment and to issue a punishment order to the offender.

In each province, there is an administrative council consisting of Heads of government units operating in the province. This council provides advice on various matters to the Governor. For educational matters, the Provincial Education Officer, who represents the Ministry of Education in the council, is normally assigned to supervise and control teachers in the place of the Governor. Therefore, most teacher disciplinary cases are first processed by the Provincial Education Officer. The Governor's primary involvement is to issue the punishment order.

Since the Provincial Education Officer handles teacher disciplinary cases, the Governor himself and others sometimes think that the Provincial Education Officer is the superordinate of teachers which is legally incorrect. The Provincial Education Officer has no direct control over teachers. The following case should explain this misunderstanding.

> **Miss V's case.** *Miss V was investigated on the grounds of 1) violating the Council of Minister Circular Concerning Office Guarding 1952, 2) violating the Revolutionary Party Order Concerning Office Guarding 1959, and 3) violating the Provincial Order Dated February 24, 1973 Concerning Office Guarding. After the investigation, the committee found that Miss V neglected to name teachers to guard school buildings and school areas at night time, which was an offence. The committee recommended that Miss V receive a two-month 10 percent salary cutback. The Governor argued:*
>
> *1) Miss V intentionally neglected to adhere to the Council of Ministers Circular and the order issued to it by the Provincial Education Officer.*
> *2) The Council of Ministers Circular states that one who violates this circular (concerning office guarding) must be put out of service. Miss V should receive such a punishment. However, Miss V*

> *used to be a good teacher; therefore, I have decided that Miss V will receive a two-month 25 percent salary cut.*

After issuing the punishment order, the Governor reported the punishment order to the Director-General of the Department of General Education. The Director-General argued:

> *1) Regarding the violation of the Provincial Education Officer, the Department has reviewed this matter and found that the Provincial Education Officer is not the superordinate of teachers of this Department. Only the Governor is. The Provincial Education Officer is the official attached to the Office of the Permanent Secretary and thus has no control over teachers of this Department. Therefore, the violation of the Provincial Education Officer's order is not the violation of a superordinate's order. Miss V has no legal committment to adhere to the order issued by the Provincial Education Officer.*
>
> *2) Regarding the failure to name teachers to guard government offices, the Department has reviewed the report of investigation and found that Miss V had been accustomed to name teachers to guard the office. But such naming was opposed by female teachers. Miss V realizes that she lives in the school ground, that the province is under control, and that she has told the janitor to report to her directly whenever the suspicions are aroused. Therefore Miss V rescinded her order. These arguments support the contention that Miss V is innocent.*

The Director-General altered the punishment order made by the Governor then reported the alteration to the Permanent Secretary. The Permanent Secretary approved the alteration.

The Revolutionary Party Promulgation #218 is the principal law concerning the administration of state affairs. However, this law is very general. The Ministry or the Department is advised to devise some subordinate laws to direct their operations. In the following section, the writer discusses the Revolutionary Party #216 which is the law concerning the reorganization of Ministries. In addition, some other subordinate laws which are concerned with the organization of related Department affairs are also discussed.

THE REVOLUTIONARY PARTY #216 AND OTHER RELATED LAWS

The Revolutionary Party Promulgation #216, promulgated on September 29, 1972, is the law that specifies the number of Departments and responsibilities of Departments within the Ministry. With regard to the Ministry of Education, this Promugation states "the Ministry of education is responsible for education, religion, and culture". To fulfill these responsibilities, the Ministry is divided into 15 Departments: 1) the Office of the Minister, 2) the Office of the Permanent Secretary, 3) the Department of Teacher Education, 4) the Department of Religious Affairs, 5) the Department of Non-formal Education, 6) the Department of Physical Education, 7) the Department of Curriculum Development, 8) the Department of Fine Arts, 9) the Department of General Education, 10) the Department of Vocational Education, 11) the Office of the Commission on National Elementary Education, 12) the Office of the Commission on Private School Education, 13) the Office of the Teachers' Commission, 14) the Office of the Commission on National Culture, and 15) the College of Technology and

Vocational Education.

These fifteen Departments and Offices are responsible for the administration of education, religion, and culture. Differences in responsibilities and the number of staff among Departments have resulted in different personnel administrative structure as well. In fact, a review of the law concerning personnel administration of teachers of Departments and Offices attached to the Ministry of Education reveals that the administration of teachers in these Departments and offices can be described in terms of three structured categories:

Category I- Elementary school teachers.

Category II- Secondary school and vocational college teachers.

Category III-Those who are not categorized in category I, II.

Category I- Elementary School Teachers. The law that makes the personnel administrative structure of elementary school teachers different from teachers in other Departments is the Royal Edict Concerning Commission on Elementary Education (1980). Section 6 of this act lists responsibilities of the commission:

1. determine general policies concerning the administration of elementary education;
2. determine plans for the development of elementary education;
3. allocate budget received from the government to elementary schools and elementary school teachers;
4. determine academic standards, school environments,

and costs of operation of elementary education;
5. make recommendations to the Minister concerning the appointment of the Secretary-General of the Office of National Elementary Education and approve the appoinment of the Director of the Office of Provincial Elementary Education;
6. appoint senior members to the Provincial Elementary Education Committee;
7. hold back or alter decisions made by the Provincial Elementary Education Committee;
8. make recommendation to the Minister concerning the issuing of regulations for the successful enforcement of this act;
9. provide advice to the Minister concerning the administration of elementary education; and
10. issue orders as required by law.

In practice, most responsibilities of the Commission are delegated to the Office of National Elementary Education. The Secretary-General, who is the senior superordinate of officials in the Office (Section 15), is responsible for the duties of the Commission.

At the provincial level, the committee on provincial elementary education is responsible for the administration of elementary education within its province. Responsibilities of the provincial committee are similar to those of the Commission on National Elementary Education except that its members are concerned only with the operation of elementary schools within the provincial territory. With regard to personnel administration of teachers, Section 17 of this act lists responsibilities of this provincial committee as follow:

> ...
> 4) approve the appointment of Head of the Office of District Elementary Education, Director of the elementary school, Principal of the school, or Head

of the elementary school;
5) approve recommendations concerning annual salary promotion of elementary school teachers;
6) issue regulations concerning the operation of elementary schools in that province....

Again, in practice, responsibilities of the committee are delegated to the Director of the Office of Provincial Elementary Education. The Director, who is the senior superordinate of elementary school teachers at the provincial level, is chiefly responsible for the administration of elementary education within the province. In addition to the execution of the provincial committee's responsibilities, the Director is also responsible for selection and recruitment of Heads of the Office of the District Elementary Education, Director of the elementary school, Principal of the elementary school, and Head of the elementary schools (Section 20(6)).

At the district level, the District Elementary Eduction Committee is responsible for the administration of education within its district. Responsibilities of this committee are (Section 24):

1. To coordinate the operation of elementary schools within the district jurisdiction;
2. To make recommendation concerning the appointment of school principals and teacher Heads to the Provincial Elementary Education Committee;
3. To make recommendation concerning annual salary promotion of elementary school teachers to the Provincial Elementary Education Committee;
4. To enforce laws, rules, regulations, and other orders that have control over elementary school teachers.

Further, Section 26 of this act provides that responsibilities of the District Elementary Education Committee may be executed by the Office of District Elementary Education. The Head of the Office of District Elementary Education, who is the senior superordinate of officials in the office, also acts as the superordinate of elementary school teachers in the district.

According to this act, elementary school teachers are supervised, controlled, directed, and evaluated directly by superordinates at three major levels; the district level, the provincial level, and the Department level. Head of the Office of District Elementary Education is the superordinate closest to the practising teacher. He has legal power to name the committee to investigate an accused teacher and to issue a punishment order if necessary. The Director of the Office of Provincial Elementary Education is the superordinate at the next level. Wherever the punishment level is beyond the power of the Head of the Office of District Elementary Education, he conveys the investigation report to the Director of the Office of Provincial Elementary Education. If the punishment level is still beyond the power of the Director, he conveys the investigation report to the Provincial Teachers' Subcommission. This subcommission has power to recommend the dismissal of teachers. However, the dismissal power remains with the authorized superordinate. After the issuing of the punishment order, the dismissal order must be submitted to the Director-General, the Permanent Secretary, and the Teachers' Commission respectively.

Category II-Secondary School and Vocational College Teachers. Although these two groups of teachers are controlled and supervised by two different Departments, the personnel administrative structures are similar. They are controlled and supervised partly by the central office. At the same time, the Director-General of the Department delegates his power to the provincial Governor. After reviewing laws and regulations that have control over teachers of these two Departments, one finds that there are two factors that differentiate personnel administrative structure of these two groups of teachers from each other. These two factors are: 1) the Royal Decree Concerning the Division of Department Units and 2) the Department Dictate Concerning the Delegation of Power of the Director-General to the Governor.

The Royal Decree Concerning the Division of Department Units. The number of Department subunits in the Department of General Education is different from the number of Department subunits in the Department of Vocational Education. However, the personnel administrative structure of the two Departments is similar. Teachers are controlled and supervised directly by Personnel Division and Division of Secondary Schools (or Vocational Colleges). For our purposes, we discuss the personnel administrative structure for teachers of the Department of General Education only. The personnel administrative structure for teachers of the Department of Vocational Education is summarized briefly.

The Royal Decree Concerning the Division of Department Subunits (1966) and subsequent Revisions states that the Department of General Education consists of 12 Divisions (Section 3):

1. The Office of the Secretary
2. Personnel Division
3. Division of Secondary Schools
4. Division of Special Education
5. Finance Division
6. Planning Division
7. Educational Supplies and Instructional Materials Division
8. Design and Contruction Division
9. The Supervisory Unit
10. The Office of Special Projects
11. The Office of Internal Inspection
12. The Special Duties Unit

Among the 12 Divisions, three have direct control over teachers; 1) Personnel Division, 2) Secondary School Division, and 3) Special Education Division. The Personnel Division is responsible for those aspects of personnel administration as assigned to it by the Director-General. This division is further divided into 5 Sections: 1) Secretary Section, 2) Manpower Planning and Position Section, 3) Recruitment and Appointment Section, 4) Personnel Record Section, and 5) Legal Section. The Manpower Planning and Position Section is responsible for manpower planning of the Department.

The Recruitment and Appointment Section is responsible for the administration of appointment examinations, transfers of teachers, and the promotion of teachers.

The Legal Section is responsible for legal matters arising in the Department. These include the drafting of new bills, rules, regulations, and orders and the subsequent transmission of the draft to senior superordinates for promulgation. In addition, the Section also acts as the legal consultant to teachers and officials of the Department. Further, the Section controls the enforcing of laws, regulations, and orders that have control over Department officials. For example, in disciplinary cases, this Section reviews reports of investigation conducted by provinces and then makes recommendations to the Director-General for further decision.

The Division of Secondary Schools is responsible for the administration of secondary schools while the Special Education Section is responsible for the administration of schools for special students such as schools for the disabled, the retarded, the deaf, and children of some poor families.

In the administration of secondary schools, the Director-General, the Director of Secondary School Division, and the Principal of the school are primary superordinates of secondary school teachers. However, in disciplinary cases, the Civil Service Regulation #5 and 6 stipulate that the Director-General is the only person who has legal power to initiate a disciplinary case against teachers of the Department. The Director of the Secondary School Division and school principal have no legal power to discipline teachers unless the power is delegated to them by the Director-General. (In most cases, the Director-General delegates such a power to the Principal of the school.)

In addition to the Royal Edict Concerning Responsibilities and the Division of Government Subunits, personnel administrative structure of secondary school and vocational college teachers are affected by the Department Dictate Concerning the Delegation of Power of the Director-General to the Governor. For example, the Department of General Education Dictate #2520/2520 dated August 26, 1977 empowers the Governor to act on behalf of the Director-General on several matters. These include disciplinary matters. The Governor therefore has power to discipline teachers of these two Departments.

Based on the above discussion, one may conclude that secondary school teachers are controlled, directed, and supervised by three hierarchical superordinates: the school principal, the Governor, and the Director-General. The school principal is the primary superordinate. He receives such power through delegation from the Director-General of the Department.

Vocational college teachers are controlled, directed, and supervised partly by the central office, which is similar to the administrative structure of secondary school teachers. The Personnel Division and the Division of Vocational College assist the Director-General in performing personnel functions of the Department. At the same time, the Director-General delegates some of his controlling power to the Director of the Division of Vocational College and to the Governor.

Whenever a teacher disciplinary case arises, the principal names the committee to investigate the case and then reports to the Governor. After reviewing the case, the Governor may alter the punishment order or approve it. He then reports the action to the Director-General. Upon receiving the report of investigation and the punishment order, the Director-General forwards the report and the order to the Personnel Division and then to the Legal Section attached to the Division. Legal persons review the legality of the investigation, appropriateness of the level of punishment, and then make recommendations to the Director-General. The Director-General then reports his decision to the Permanent Secretary and the Teachers' Commission. In addition, in serious disciplinary cases, it is required that the termination, the putting out of service, or the dismissal order be priorly approved by the Department Teachers' Subcommission.

Category III- Teacher's College Teachers and Other Similar Groups. Teachers who are categorized in this group are teachers' college instructors, college of physical education instructors, college of fine arts instructors, college of drama instructors, college of technology and vocational education instructors, non-formal education center instructors, District Education Officers, and Provincial Educational Officers. In general, personnel administration structures of teachers in this category are similar to each other. Teachers are controlled, supervised, and directed directly by the central office. No delegation of power is made between the Director-General and the Governor. Policies, orders, and standards of practice are initiated by the central office and then forwarded to institutions or centers located in provinces. Since the personnel administrative structures of groups of teachers in this category are similar, we choose here to discuss the personnel administrative structure of teachers of the Department of Teacher Education only.

Laws that make the personnel administrative structure of teachers in this group different from others are: 1) the royal edict (or the Ministry Promulgation, for some groups of teachers) concerning the founding of educational institutions and 2) the Department order concerning the delegation of power to the Head of the institution. In the Department of Teacher Education, Section 13 of the Royal

Edict Concerning Teachers' College 1975 states the power and responsibilities of the Teacher Education Council as:

1. Issuing rules and regulations concerning the operation of teachers colleges. These include the determination of entering qualification of students and administrative regulations of the teachers colleges.
2. Appoint, transfer, and remove the Rector of the college, the Vice Rector, Head of the Office of the Rector, Assistant Head of the Office of the Rector, Chairperson of the Faculty, Assistant Chairperson of the Faculty, Head of the Department, Assistant Head of the Department, Professor, Associate Professor, and Assistant Professor.

Regarding the administrative structure of the teachers' college, Section 7 of this act states "the teachers' college consists of two college subunits: 1) the Office of the Rector and 2) the Academic Faculties". Within the Office of the Rector, the Faculty, and the academic Department, "the Head of the Office of the Rector is the primary superordinate of officials of the Office, Chairperson of the Faculty is the primary superordinate of staff of that faculty, and Department Head is the primary superordinate of staff of the Department (Section 23)". "The Rector is the superordinate of instructors of the college (Section 16)".

In addition to the Royal Edict Concerning the Teachers College 1975, the personnel administrative structure of instructors is affected by the Department of Teacher Education dictates. These dictates authorize the Head of the institution to supervise his subordinates. However, the dictate does not authorize the Head of the institution to take disciplinary actions against his subordinates but only to inform the Director-General of undisciplined behaviors of his subordinates.

In other Departments, (e.g. Department of Physical Education, Department of Fine Arts, Department of Informal Education, and the College of Technology and Vocational Education), the personnel administrative structures of teachers are similar to the one of the Department of Teacher Education. The Ministry Promulgation concerning the founding of the institution in such Departments determines relationships between the teacher and Head of the institution. However, the Director-General is the one who has legal power to name a committee to investigate the case or to issue a punishment order to the offending teacher.

A review of laws concerning personnel administrative structure of teachers in these three categories underscores some differences among these three groups of teachers.

1. Elementary School Teachers. The Royal Edict Concerning Elementary Education (1980) requires that personnel administration of elementary school teachers be done by the Commission on National Elementary Education. At the provincial level, the Provincial Elementary Education Committee and the Provincial Teachers' Subcommission have power to make decisions concerning personnel administration (including serious disciplinary cases) of teachers in the province. After the decision is made, the punishment order

is forwarded to the Secretary-General of the Office of the National Elementary Education; then the Permanent Secretary and the Teachers' Commission respectively.

2. Secondary school or vocational college teachers. In this category, the Director-General delegates his power to the Head of the institution and the Governor. The Head of the institution has power to take disciplinary actions against teachers under the provision of Civil Service Regulation #5 and 6. Eventually, the Governor names the committee to investigate the case and to issue punishment order if required. However, the Director-General is still a very powerful person in determining the legal status of teachers in the Department.

3. Teachers of other Departments. The administrative structure for teachers of other Departments is highly centralized. There is no delegation of legal power between the Director-General and the Governor. Some limited powers are delegated to the Head of the institution. However, the power to investigate the accused teacher and to issue a punishment order belong to the Director-General only. Supervisors at the college level are only to ensure that his subordinates obey regulations and to inform the Director-General whenever the inappropriate behavior is observed.

THE TEACHERS' REGULATION ACT 1980

The Royal Edict Concerning Teachers' Regulation 1980 (or the Teachers' Regulation Act (1980) = TRA 1980) outlines regulations concerning personnel administration of teachers. Two major themes included in this law are: 1) teacher personnel administration practices and 2) the power and responsibility of the teacher administration organization.

Teacher Personnel Administration Practice. Section 23 of this act states that one who wishes to engage in the teaching profession is required to possess these general qualifications:

1. is a Thai citizen,
2. is 18 years of age or over,
3. believes purely in the democratic form of government under the constitution,
4. is not a political official,
5. is not disabled or muddled, or a person suffering from diseases as specified in the Civil Service Regulation,
6. is not a person removed temporarily from work under the provision of this or other acts,
7. is of good morals,
8. is not in excessive debt,
9. is not bankrupt,
10. is not a former convict unless such an imprisonment was due to a petty offence,
11. is not a person terminated, put out of service, or dismissed by the public enterprise,[9]
12. is not a person terminated or put out of service due to a disciplinary case under this or other acts,
13. is not a person dismissed due to disciplinary case under this or other acts,
14. is not a person convicted of cheating on a

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[9] The public enterprise is similar to the Crown Corporation of Canada.

written test regulation.

> Those whose qualifications do not meet (7)(8)(9)(10) or (14) may request exemption from the Teachers' Commission. Those whose qualifications do not meet (11)(12) but have been terminated or put out of service over two years, or those whose qualifications do not meet (13) but have been dismissed over three years and are not terminated, put out of service, or dismissed on the ground of dishonesty to the position may request exemption from the Teachers' Commission. The decision concerning the exemption of such departed qualifications must be done confidentially and unanimously.

In addition to general qualifications, a person who seeks a teaching job needs to have qualifications for the position. Qualifications for each position are varied. For example, a person who wishes to teach English in secondary school needs to have an English background (i.e. have a university degree with an English major). Position qualifications are specified by the Teachers' Commission for each appointment examination.

With regard to the controlling procedure, the Teachers' Regulation Act (1980) states that the Revolutionary Party Promulgation #218 discussed earlier be applied to all teachers. In addition, Section 33 of the Teachers' Regulation Act (1980) states:

> Under the provision of law concerning the administration of state affairs, what position is to control which group of teachers and in which educational organization will be determined by the superordinate who has appointment power as specified under Section 42. Such determination must be done in writing.

Power and Responsibilities of the Teacher Administration Organization. There are three organizations that have direct control over personnel administration of teachers: 1) the Teachers' Commission (Section 6), 2) the Department Teachers' Subcommission (Section 15(1)), and 3) the Provincial Teachers' Subcommission (Section 15(2)).

The Teachers' Commission. This commission is chiefly responsible for making recommendations to the Minister concerning personnel administration of teachers. Powers and responsibilities of the Commission are (Section 7):

1. to make recommendations and provide counsel to the Minister concerning personnel administration of teachers and the organization of educational units attached to the Ministry of Education;
2. to initiate and enact rules and regulations for the enforcement of this act. Regulations, after being approved by the Council of Ministers and published in the government gazette, are enforceable;
3. to investigate and resolve problems arising through the enforcement of this act. Decisions and interpretations made by the Teachers' Commission, after being approved by the Council of Ministers, are enforceable;
4. to control, supervise, inspect, and advise educational organizations and Departments. Accordingly, the commission has power to call for documents and evidence from any educational organization, Department, teacher, or person. Also, the commission has power to enact regulations concerning appointment examination, appointment, salary promotion, disciplinary procedure, termination, dismissal, position promotion, personnel records, and transfer of educational personnel;
5. to inform the Prime Minister when it is found that the educational organization, the Department Teachers' Subcommission, the Provincial Teacher

Subcommission, or other responsible legal persons violate this act so that the Prime Minister may order further investigation;

6. to maintain personnel records of teachers;

7. to approve or disapprove degrees or certificates issued by educational institutions and to determine salary schedules for those who hold such degrees or certificates. In determining salary schedule, the commission may consult the Civil Service Salary Schedule.
8. to determine fees for the enforcement of this act; and

9. to implement royal decrees, rules, regulations, and standards of practice enacted under this or other acts.

Among these nine responsibilities, the second one is the most important. The commission has power to enact rules, regulations, and standards of practice to control teachers. However, in practice, the commission has not yet enacted any rule or regulation. The rules and regulations enacted by The Civil Service Commission are therefore applied to teachers.

Since the Teachers' Commission consists of members who are also responsible for their own work responsiblities, in practice, it delegates its powers and responsibilities to the Office of the Teachers' Commission. Section 22 of this act lists responsibilities and powers of the Office of the Teachers' Commission:

1. to execute the commission's routine responsibilities;

2. to conduct research concerning personnel administration of teachers and make recommendations to responsible persons;

3. to monitor the adherence to laws of educational units, Departments, Department Teachers' Subcommission, and Provincial Teacher Subcommission and report results received through such activities to the Teachers' Commission;
4. to prepare and present annual reports concerning teacher personnel to the Teachers' Commission; and
5. others as assigned to it by the Teachers' Commission under this or other acts.

In addition to the Office of the Teachers' Commission, this act also provides that the Teachers' Commission may name some ad hoc committees to assist the commission in some particular tasks. To date, five such ad hoc committees have been established. These temporary committees have dealt with such diverse teacher personnel matters as: the determination of position and salary schedule; recruitment and teacher staff development; regulations and legal matters; termination, putting out of service, or dismissal; and grievance and appeal.

According to the Teachers' Regulation Act (1980), the teacher commission is responsible mostly for policy development. The Educational Minister, ex officio and President of the Commission, is the one who is to implement the policy. And under the provision of the law concerning the administration of state affairs (Revolutionary Party Promulgation #218), the Minister is the senior superordinate of officials in the Ministry. He has power to supervise, control, and evaluate performance of all officials of the Ministry. However, in implementing the policy concerning teacher personnel, the Commission delegates most of its power to the Department Teachers' Subcommission and the Provincial Teachers' Subcommission. Details concerning components and responsibilities of the subcommissions follow.

The Department Teachers' Subcommission. The Department Teachers' Subcommission is responsible for personnel policy making at the Department level and also for the implementation of personnel policy approved by the Minister. The Department Teachers' Subcommission consists of nine commissioners, including the Director-General, various officials and three teacher representatives. The Subcommission is responsible for (Section 20 para 1):

> ... the implementation of this act and other duties as may be assigned to it by the Teacher Commission. In addition, the Subcommission may provide suggestions concerning personnel administration of teachers to the Director-General.

The apparent conclusion, then, is that the major responsibility of the Department subcommission is to implement policies, rules, regulations, and principles adopted by the Teachers' Commission. For example, the Teachers' Commission enacts the principle concerning salary promotion then the Department Teachers' Subcommission implements such a principle.

In addition to the implementation of policies and regulations mentioned, the Department Subcommission is also responsible for:

1. the approval or the disapproval of the appointment which is initiated by the Director-General, of Class 6 and Class 7 teachers (Section 42(3));
2. the administration of the appointment examination as assigned to it by the Teachers' Commission (Section 38(2)); and
3. the execution of the Council of Ministers Dictates or orders in council, or the alteration of its own previous decisions as requested to do so by the Council of Ministers (Section 8).

Further, in practice, there are some other responsibilities and powers that are delegated to the Department subcommission. These responsibilities and powers are (Silapa-anant, 1981:4):

> 1. the approval or disapproval of the teacher who satisfactorily passes the appointment examination;
>
> 2. the approval or disapproval of the awarding of tenure to teachers;
>
> 3. the approval or disapproval of the reappointment of teachers who come back from military services;
>
> 4. the approval or disapproval of the reappointment of the resigned teacher;
>
> 5. the approval or disapproval of the reappointment of the teacher who returns from works assigned to him by the Council of Ministers;

6. the approval or disapproval of the transfer of teachers in the Department.

7. the approval or disapproval of the appointment of a teacher whose qualifications deviate from prescribed standards;

8. the approval or disapproval of the termination of the teacher whose qualifications deviate from the prescribed standards;

9. the approval or disapproval of the appointment of a teacher to a vacancy;

10. the approval or disapproval of a transfer of the teacher within the Ministry.

The Provincial Teachers' Subcommission. The Provincial Teachers' Subcommission consists of nine commissioners, including the Governor and three teacher representatives. The subcommission is responsible for "the implementation of this act ... in regard to elementary school teachers in the province (Section 20 para 2)."

The responsibilities are similar to the responsibilities of the Department Teachers' Subcommission. But focus of this subcommission is on elementary school teachers only. Teachers of other Departments are not controlled by this subcommission.

As noted earlier, the Teachers' Regulation Act (1980), while varied as the major act dealing with teacher personnel, does not undertake to regulate such teacher personnel factors as discipline and guidance problems and so forth. Rather, teachers are regulated in such matters by the provisions of the Civil Service Regulation Act (1975).

THE CIVIL SERVICE REGULATION ACT 1975

The Civil Service Regulation Act 1975 is the law concerning personnel administration of civil servants. It was the law regulating teachers prior to the Teachers' Regulation Act (1980). Section 4, 60, and 61 of the Teacher regulation Act (1980) state that all provisions of the Civil Service Regulation Act 1975, unless specified, are also applicable to teachers. Two major themes of the Civil Service Regulation Act 1975 are worthy of discussion here:

1. The structure of the Civil Service Organization and its responsibilities regarding personnel administration.
2. The personnel administration regulations governing teachers.

The Civil Service Organization: Its Structure and responsibilities. There are four levels of civil commission that are responsible for personnel administration of civil servants: 1) the Civil Service Commission, 2) the Ministry Civil Service Subcommission, 3) the Department Civil Service Subcommission, and 4) the Provincial Civil Service Subcommission.

The Civil Service Commission. The Civil Service Commission consists of seventeen commissioners: 1) the Prime Minister or the designated Deputy Prime Minister, Chief commissioner, 2) the Secretary-General of the Office of the

Civil Service Commission, Secretary of the Commission, and 3) fifteen appointed commissioners. According to Section 8, responsibilities of the commission are:

1. to make recommendations and provide advice concerning personnel policy and administration to the Council of Ministers;

2. to initiate and enact rules and regulations for the enforcement of this act. Rules and regulations, after being approved by the Council of Ministers and published in the government gazette, are enforceable;

3. to consider and resolve problems arising through the enforcement of this act. Decisions and interpretations made by the Civil Service Commission and after being approved by the Council of Ministers are enforceable;

4. to control, supervise, inspect, and advise Ministries and Departments. Accordingly, the commission has power to call for documents and evidence from any government organizations, public enterprise, or to order any government organization, public enterprise, government official, or person to be present before and to provide information to the commission. Also, the commission has power to enact regulations concerning the appointment examination, salary promotion, disciplinary procedure, termination, dismissal, position promotion, personnel records, the alteration of position of civil servants, and the alteration of responsibility of civil servants;

5. to inform the Prime Minister when it is found that Ministries, Government Bureaus, and Departments do not adhere to this law so that the Prime Minister may order further investigation;

6. to report changes in the inflation index

to the Council of Ministers so that the Council of Ministers may make some adjustments concerning government official salary schedules and compensation;

7. to make arrangements concerning selection examination of students who aspire to receive government's scholarships to study abroad. For such purposes, the commission has power to enact regulation concerning the administration of the examination;

8. to inspect and direct Thai students who are studying in foreign countries. For such a purpose, the commission has power to enact regulations or orders to control the student's educational program choices, conduct, expenditures, and behavior;

9. to approve degrees or certificates granted by various institutions and to determine salary schedules for civil servants who hold these degrees or certificates;

10. to determine fees for the enforcement of this act;

11. to maintain personnel records of civil servants; and

12. to implement royal decrees, rules, regulations, standards of practice, and other regulations enacted or issued under this or other acts.

Most responsibilities mentioned are similar to those of the Teachers' Commission. Four of them, articles #2, 6, 7, and 8 are beyond the responsibility of the Teachers' Commission.

Among the four responsibilities, the first one is the most important. Regulations concerning disciplinary procedures, grievance procedures, and appeal procedure enacted by the Civil Service Commission are applicable to teachers. In particular, an examination of the Civil Service Regulation Act (1975) and the Teachers' Regulation Act (1980) reveals that the following provisions are applicable to teachers.

1) Salary schedule. Section 24 of the Teachers' Regulation Act (1980) states that "the Teachers' Commission uses the Civil Service Salary Schedule mutatis mutandis in determining teacher salary," therefore, this civil servant salary schedule is applied to teachers.

2) The reserve fund. Section 26 of this act states that the Ministry of Finance may hold back parts of civil servants' salary as a reserve fund. The Ministry must pay back such amount of money with interest not less than the amount given by the commercial bank to the teacher at his retirement date or as stated in the regulations concerning such matters.

3) Disciplining procedures. The Civil Service Regulation Act 1975 notes sixteen categories of civil servant disciplines. Details of disciplinary procedures are discussed in chapter VI of this thesis.

4) The termination of civil servants. Section 94 of the Civil Service Regulation Act 1975 states that a government official's appointment may be terminated on several grounds. Details of termination procedures are

discussed in Chapter VI of this thesis.

5) Grievance procedures. The subordinate may present his grievance to a superordinate where he believes that the superordinate is violating regulations in dealing with him (Section 102).

6) Appeal procedure. The subordinate who receives an unjust punishment may appeal to a senior superordinate (Section 103). In addition, if the subordinate is still unsatisfied with the appeal, he may appeal further to the administrative court (Section 107).

THE TEACHERS' ACT 1945

The Teachers' Act 1945 (revised 1980) is the law designed to protect and develop the teaching profession. Two major themes included in this act are:

1. The structure and responsibilities of the teaching profession.
2. Practices that aim at protecting and developing the teaching profession.

The Structure and Responsibilities of the Teaching Profession Organization. Kitti Hasanee (1982:62), Director of the Division of Standard of Teaching Profession, attached to the Office of the National Teachers' Council, explains that the teaching profession organization consists of administrative committees at three different levels: 1) the National Teachers' Council, 2) the Provincial Teachers'

Council, and 3) the District Teachers' Council.

The National Teachers' Council. This council consists of twenty five councillors (Section 7): 1) the Minister for education, President, 2) the Permanent Secretary, Vice President, 3) Director-Generals or Heads of government units equivalent to the Director-General (currently 13), and 4) ten teacher representatives. The council is responsible for (Section 6):

1. participating in the reading of drafted policies concerning general administration of education, such as curriculum development, textbook development, instructional material production, student evaluation, educational supervision, and other matters which are concerned with general administration of education;
2. controlling and supervising teaching profession practices;
3. determining and improving standards of the teaching profession;
4. protecting the rights of qualified teachers under the law; and
5. providing welfare and job security to teachers under the law. In addition, councillors consider grievances presented to them by the teacher.

In controlling teaching profession practices, the Council has power to issue a *Teacher Code of Ethics*, to determine standards of teaching practices, to enact regulations concerning the evaluation of teaching performance, to grant teaching certificates to qualified teachers, to make recommendations to teacher training curriculum developers for the improvement of teaching practice, and to make some arrangements for teacher in-service training. In protecting rights of teachers, the council is empowered to expel those who are not qualified to teach from the teaching profession. In providing welfare and job security, the council provides health care services to its members. In addition, the council also helps teachers to locate their lawyers. However, currently, the powers noted above are not exerted adequately.

The Provincial and the District Teachers' Council. The Provincial and the District Teachers' Councils are responsible for the implementation of policies, rules, regulations, and standards of practice enacted by the National Teachers' Council within their jurisdictions. In addition, the councils may make recommendations concerning the development of policies, rules, regulations, and principles to the National Teachers' Council (Section 33 and 35).

Practices Concerning the Promotion and the Development of Teaching Profession. To protect and develop the teaching profession, every teacher is required to behave according to the dictates of the *Teacher Code of Ethics*. In particular (Division of Standards of Teaching Profession, 1982:5):

> Chapter I: Goals of the teacher (to):
> 1. Believe in the teaching profession and devote himself to students and education.
> 2. Protect and improve the teaching profession.
> 3. Value the community's benefits higher than one's own benefits.

Chapter II: Characteristics of teachers:

1. The teacher is patient, flexible, and controlled both in and outside the class.
2. The teacher is responsible for self and work responsibilities, and is able to work cooperatively with colleagues.
3. The teacher is interested in the learning progress, general behavior, and life-style of his pupils. He treats his pupils equally and reasonably.
4. The teacher is anxious to learn, to research, and to improve his teaching performance. He is clever in choosing appropriate methods of teaching.
5. The teacher is industrious and creative.
6. The teacher is fair and impersonal. He creates the feeling of equality among his pupils.
7. The teacher earns his living simply. He spends his income wisely and economically.
8. The teacher is moral. He believes in his religious tenets.
9. The teacher is polite. He behaves himself accordingly to the law and is a good exemplar to his pupils.

Chapter III: Standards of teaching practice:

1. The teacher is required to provide credibility and respect for his teaching profession organization.
2. The teacher is required not to despise nor insult a person's religion or religious beliefs.
3. The teacher is required to behave properly and not to demean himself.
4. The teacher is required not to be absent from his teaching duties. He is required to devote his time to the pupils.
5. The teacher is required not to disclose confidential information regarding his pupils, colleagues, and schools.
6. The teacher is required to behave accordingly to his school's good traditions.
7. The teacher is required to perform his duties honestly and without bribery or coercion.
8. The teacher is required not to distort knowledge.
9. The teacher is required not to insult his colleagues or any other. He is required to believe in, accept, and adhere to the legal order of his superordinate.
10. The teacher is required not to take

advantage of his pupil's labour or works.

11. The teacher is required not to use or permit others to use his academic knowledge for human destruction.
12. The teacher is required not to participate in any fraudulent activities.

The three chapters of *Teacher Code of Ethics* are equally important. The first chapter discusses goals of those who participate in the teaching profession. Teachers are advised to aspire to achieve these goals. The second chapter describes the ideal image and personality of teachers. Teachers are advised to develop these eight characteristics. The National Teachers' Council believes that these eight identities could differentiate a professional teacher from people of other occupations. The teacher should be polite, industrious, creative, patient, flexible, controlled, responsive, and ethical. He should earn his living simply and act as a good exemplar to his pupils. The teacher should not claim in excess his own salary or compensation. The first two chapters explain to teachers what expectation they aspire to achieve. However, the teacher who does not adhere to these dictates is not necessary disciplined. But he could lose respect or acceptance from the public. Provisions of the third chapter, however, are mandatory. They are standards of teaching practice. The teacher who does not adhere to these standards shall be disciplined. Section 29 of the Teachers' Act 1945 states:

> The National Teachers' Council may name a subcommittee to evaluate the adherance to *Teacher Code of Ethics*. For such purposes, the subcommittee may advise or investigate an accused teacher and report to the National Teachers' Council for further decisions.

After receiving and reviewing the report of investigation, the National Teachers' Council may, where appropriate, order a probation or a termination of membership. In addition, the council may report the case to the responsible superordinate for further disciplinary investigation. The violation of the code of ethics is categorized as a misbehavior and teachers may be disciplined under the provision of Section 81 or 97 of the Civil Service Regulation Act (1975).

In addition to the enforcement of the code of ethics, the National Teachers' Council is also responsible for the provision of updating and upgrading in-service training for teachers. Non-certificated or non-degree teachers who wish to upgrade themselves can attend the in-service or self study programs, write the test administered by the council, and then request a higher diploma and salary.

Further, in protecting the teaching profession, the council is presently preparing a certification process for teachers. The decision has been made that, in the future, teachers will require a teaching certificate granted by the National Teachers' Council. However, regulations initiated by the council thus far have not yet been approved by the Council of Ministers.

The Teachers' Act 1945 aims at protecting and improving teaching profession practices. However, presently, goals of the act have not been achieved. The council is endeavoring to educate members of the parliament and the cabinet to revise general qualifications of those who wish to teach.

OFFICIAL CIRCULARS

The circular is an official document which regulates practices of teachers. Some circulars are considered as law since they regulate behaviors of teachers and also specify levels of punishment of violators. Some circulars are not considered as laws. They are only official documents which delineate desired behaviors of officials. Circulars come from various sources. Some are issued by the Council of Ministers while some are issued by the Office of the Prime Minister, the Civil Service Commission, the Teachers' Commission, the Ministry, the Department, and other related government organizations. Circulars have different names. Some are called "Orders in Council" while others are called "the Civil Commission's Approved Decision", "the Teachers' Commission's Approved Decision", "the Office of the Prime Minister Order", "the Ministry's Order", "the Department's Order", and so on. After examining existing circulars, the writer categorized circulars into four groups: 1) the reminding circular, 2) the policy-explanation circular, 3) the law-interpreting circular, and 4) the gap-filling circular.

The reminding circular. Very often, the Council of Ministers or the responsible government organization perceives that government officials do not believe in or do not adhere strictly to the law. Thus circulars are issued to remind government officials to adhere strictly to the law. The circular issued for such purpose is in the form of 'approved decision', dictate, or promulgation. For example, the Council of Ministers's Approved Decision #NW 108/2502 cautions that officials are advised to adhere strictly to Section 75 of the Civil Service Regulation Act 1975. This circular also warns that government employees are required to arrive at the office before office hours and leave the office after office hours. The government employee who violates this circular must be terminated.

In addition to the reminding circular concerning the devotion of time, there are many other circulars in this category, e.g. gambling, drinking, misbehavior, government employee harmony, the using of government organization's cars, the punishment of offending officials, etc.

The policy-explanation circular. The circular in this category aims at explaining policies on general administration of the new government. Most circulars issued for this purpose regulate behaviors of officials and also specify the level of punishment. For example, the Ministry of Education's Dictate #38/2473 states that "officials of the Ministry are not permitted to participate in illegal shares or to organize the illegal share. The official who violates this order must be at least put out of service". Circular #SR 0202/W97 forbids government officials marying refugees. Circular #NW101/2495 states that "government units must name their officials to guard government offices during both day and night time". Circular #SR0206/W59 forbids high ranking officials serving in provinces or districts to organize farewell or promotion parties. Circular #NW158/2494 forbids officials disclosure of confidential government documents, and so forth.

The law-interpreting circular. In some cases, provisions of the law are ambiguous. The government is required to interpret such laws. After the interpretation, the government normally circulates its interpretation to government organizations. For example, the Office of the Council of Ministers' Circular #SR 0203/W62 interprets the Order of the Reconstructional Party #38/2519 which states "government employees are not allowed to hold any position in a business company or corporation. The government employee who violates this circular must be at least terminated". Many law enforcers perceived that this order contradicted Section 79 of the Civil Service Regulation Act 1975. The Juridical Council interpretation states that the order did not contradict the provision of the act but rather modified the act. Another example of the circulars in this category is the Civil Service Commission Circular #SR 0506/171642. This circular explains the legal power of the superordinate in disciplining a civil servant who holds Class 7, 8, or Class 9 position.

The gap-filling circular. The circular in this category aims at filling gaps in the law. For example, the Office of the Civil Service Commission's Circular #NW 1/2501 states that:

> the official whose duty is to make recommendations concerning legal matters to the superordinate is required not to make a misleading recommendation. He is required to study existing laws, rules, and regulations intensely before making the recommendation.

Another example of circular in this category is Circular #M3346/2477 which states that "the government organization is required to take criminal action against any government employee who violates the criminal code in the court of justice".

The circular best indicates policies on personnel administration of the government. It explains to government employees the behavior expected of them. Most circulars are concerned with current problems rather than anticipated problems. A few circulars are not adhered to strictly by succeeding governments. For instance, the Ministry of Education's Dictate #38/2473 which forbids Ministry's officials participating in illegal shares[10].

Examination also reveals that circulars issued by the government in power are enforced more strictly than those issued by previous governments. More importantly, some governments in power issue circulars which contradict existing laws but which are enforced nevertheless. For example, the Minister of Education issued a dictate dated January 13, 1977 directing the National Teachers' Council to terminate the collection of membership fees from its members. The order contradicts Section 5(2) of the Teachers' Act (1945), but it remains in force.

SUMMARY

In this chapter, six major laws and four categories of circulars relevant to the legal status of Thai teachers were discussed. These included: 1) the constitution, 2) the Revolutionary Party Promulgation #218, 3) the Revolutionary Party Promulgation #216 and some related laws, 4) the Teachers' Regulation Act (1980), 5) the Civil Service Regulation Act 1975, 6) the Teachers' Act 1945, and 7) circulars.

The constitution specifies relationships between the three powers (e.g. the legislative, the executive, and the judicial) and the regulations concerning the exercising of these powers. It also guarantees rights of citizens, civil servants, and teachers.

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[10] A very popular activity in Thailand not unlike a limited lottery.

The Revolutionary Party Promulgation #218 specifies regulations concerning the exercise of executive power. This law provides that the Prime Minister is Head of the executive. He is responsible for the administration of state affairs of all Ministries. The Minister, the Permanent Secretary, and the Director-General are responsible for the administration of state affairs of the Ministry and the Department respectively. In addition to these administrative positions, the Governor has delegated power to control and supervise officials of most Ministries and Departments.

The Revolutionary Party Promulgation #216 prescribes general responsibilities for Ministries. However, the provisions of this law are very general. The Department is advised to enact subordinate laws to guide its operation.

The Teachers' Regulation Act (1980) is another principal law which regulates the personnel administration of teachers. This law specifies regulations concerning general and specific qualifications of teaching applicants, standards of position, appointment, promotion, transfer, discipline procedures, and so on. It is the law that directs personnel practices of teachers.

In addition to the Teachers' Regulation Act (1980), teachers are also governed by provisions of the Civil

Service Regulation Act 1975. All regulations and orders issued by the Civil Service Commission are applicable to teachers. Specifically, in disciplinary cases, the TRA (1980) stipulates that the superordinate enforce regulations enacted by the Civil Service Commission.

The Teachers' Act 1945 (revised 1980) is the law that aims at protecting and developing its teaching profession. This law specifies standards of teaching profession practices, and is employed in the screening of prospective teachers.

Circulars are government documents indicating government intentions and policies. Some circulars are considered as law while some are not. Some circulars are issued to remind officials to devote more time and energy to their official duties. Some are issued to interpret ambiguous laws. Over a period of time, these circulars tend to become obsolete and are frequently replaced, rescinded or ignored.

CHAPTER V

THE LEGAL STATUS OF TEACHERS REGARDING CERTIFICATION, APPOINTMENT, TENURE, PROMOTION AND TRANSFER

In Thailand, teachers are seen generally as major contributors to the development and prosperity of the nation itself. For example, Silapa-anant (1980:54) delineates this viewpoint:

> Teachers are the key factor in the development of the nation. Teachers could improve quality of life of students. The quality of teachers determines the quality of school graduates. The quality of school graduates determines success of the development of the nation.

In order to assure the quality of educational services provided by the teacher, the Thai government developed laws and regulations to direct and guide the administration of Thai teachers. In this chapter, five topics concerning the administration of teachers are discussed. These include:(1) teacher certification, (2) teacher appointment, (3) teacher tenure, (4) teacher promotion, and (5) teacher transfer.

TEACHER CERTIFICATION

Currently, the process of certification to control teacher quality does not exist in Thailand. However, the Thai government has initiated a policy aiming at such control. This policy states (Clause 43: National Scheme of Education 1977):

> Clause 43: Management of educational personnel shall follow the system governing administration and agents. It shall promote professional advancement among educational personnel of the State and of the community. There shall be an educational professional institute whose functions are to promote quality in the teaching profession, to protect their right and interest, and to develop a standard code of conduct for teachers.

In response to this policy, the National Teachers' Council has worked industriously to develop regulations concerning the certification of Thai teachers. To date, the certification regulation is not in effect. However, four questions appear to underline the concern regarding certification of teachers: Should teaching be regarded as a profession? Should Thai teachers be required to have teaching certificates? Who should be entitled to teaching certificates? Whose teaching certificate should be cancelled?

Should Teaching Be Regarded as a Profession?. Before making a judgment whether or not teaching in Thailand can be regarded as a profession, it might be appropriate to consider factors determining professionalization of an occupation. Ryan and Cooper (1980:372-373) claim that the occupation that should be regarded as a profession should exhibit the following eight criteria:

> First, a profession renders a unique, definite, and essential social service. Only the people in the particular profession render the service. For instance, only lawyers practice law. The service rendered must be considered so important that it is available to all the people in a society.

Using this criterion, we can argue that educational services provided by teachers are unique and essential to children. Does this mean that it is only the person who has received teacher training who can perform such services? If the answer is "yes" and if it is found that educational services rendered by teachers are significantly more qualitative than those rendered by parents, friends, or others who have never received teacher training, we can assure that teaching exhibits this criterion.

> Second, a profession relies upon intellectual skills in the performance of its services. This does not mean that physical actions and skills are not needed, but rather that the emphasis in carrying on the work is on intellectual skills and techniques.

The member of the profession performs tasks by relying on his intellect. He rarely employs the trial and error method with his clients. His practice is based on research findings and theories which are accepted world-wide. More important, the member of the profession is capable of analyzing and solving immediate problems arising through his practice. For instance, the physician can detect the malfunction or illness of his patient. He can also assess which patient is to receive what kind of treatment. In the case of teachers, the teacher can be seen to meet this criterion if he can detect the academic potential of his students, detect academic weakness and strengths of individual students, select the best method of teaching and best instructional media to fit the particular content, select exercises which best facilitate student potential, and employ the best-fit evaluation method.

> Third, a profession has a long period of specialized training. Because professional work requires special intellectual skills, specialized intellectual training is needed. General education, such as that represented by a bachelor's degree, is valued, but not considered adequate. The specialized training must cover a substantial period of time and not be obtained in cram courses or correspondence schools.

In order to ensure that the member of the profession can analyze problems arising through the performing of his duties, it is necessary that he undertake a long period of specialized training. The bachelor's degree is considered insufficient. He needs to receive specialized training in the real situation so that he becomes capable of analyzing and finding solutions to the problem that might arise through his own practice. For instance, the physician requires an internship before practising his profession. During the internship period, the medical student will have opportunities to apply his knowledge. He will meet with patients, examine them, and suggest healing procedures under the supervision of the veteran physician. Further, during the training period, the medical student will spend most of his time in the hospital and with patients. As a result, the medical student will feel that patients and the hospital are parts of his life. With regard to teachers, teaching can be seen to meet this criterion if prospective teachers receive a long period of teacher training which involves actual classroom experience under the guidance of a veteran teacher.

> Fourth, both individual members of the profession and the professional group enjoy a considerable degree of autonomy and decision making authority. Where as factory workers have very limited decision making powers and are closely supervised in the performance of their work, professional are expected to make most of their own decisions and be free of close supervision by supervisors. Also, professional groups regulate their own activities rather than having outsiders set policies and enforce adherance to standards.

The member of the profession enjoys some degree of autonomy in making decisions concerning the problem arising through his practice. He does not require close supervision from his superordinate. In addition, members of the profession cooperatively devise their own standards of performance without assistance and control of outsiders. With regard to teaching, the teacher will be regarded as a member of the teaching profession if he is responsible for his duties, performs his duties effectively, and adheres to disciplines and teachers' codes of ethics. Further, the control of standards of performance should also be done by the professional organization which Thailand would be the National Teachers' Council. If it is found that the performance does not meet the standards, it should be the professional organization which cancels membership of that teacher.

> Fifth, a profession requires its members to accept personal responsibility for their actions and decisions. Along with having a high degree of freedom and autonomy, the professional must shoulder a large measure of responsibility for his performance. Since the professional's service is usually related to the human welfare of individuals, this responsibility is an especially serious one.

Since the professional member retains a high degree of autonomy and his decisions affect the welfare of his clients, it is necessary that he be responsible for his own decisions. For instance, in the case of teacher, the decisions concerning the selection of teaching method, learning activities, and evaluation methods could result in failure of a student, the teacher will have to be responsible for such decisions.

> Sixth, a profession emphasizes the service rendered by its practitioners more than their financial rewards. While the personal motives of any individual professional are not necessarily any higher than any worker's, the professional group's public emphasis is on service.

According to this criterion, the member of the profession is supposed to emphasize quality of service to the client rather than financial rewards. The degree of emphasis of service determines the degree of professionalization of the profession. For instance, the degree of professionalization of teaching will be low if teachers go on strike requesting higher pay. Requests for higher pay should be done through other means and without disrupting teaching and learning activities.

> Seventh, a profession is self-governing and responsible for policing its own ranks. This means there are professional groups who perform a number of activities aimed at keeping the quality of their services high and looking out for the social and economic well being of the professional members. Also, these self-governing organizations set standards of admission and exclusion to the profession.

The professional organization must be a self-governing organization. It has to maintain high standards of performance and the well-being of its own members. It needs to have autonomy to establish standards of performance for its own members, to admit qualified persons to its organization, and to expel the incompetent member from the profession. For instance, teaching in Thailand would be seen to be more professionalized if the National Teachers' Council had authority to establish standards of teaching performance, to admit qualified college or university graduates to the council, and to cancel membership of the inadequate teacher.

> Eighth, a profession has a code of ethics which sets out the acceptable standards of conduct of its members. In order for a professional group to regulate the quality and standards of services, it needs a code of ethics to aid it in enforcing these high standards.

In order to maintain its professional standards and esteem, the professional organization must develop a professional code of ethics. Members of the professional organization should be informed how to behave. For instance, in the case of Thai teachers, the National Teachers' Council should have authority to develop a teacher code of ethics. This code should be adhered to strictly by its members.

The criteria noted above are tools that can be used to judge the degree of professionalization of the occupation. It is difficult to say whether or not teaching in Thailand is regarded as a profession. However, the writer supports the idea of making teaching a profession since the professionalization of teaching is beneficial to children, teacher training institutes and teachers themselves.

Should Teachers be Required to Have Teaching Certificates?. Before answering this question, the writer would like to present the result of a survey conducted by the National Teachers' Council in 1980. In the survey, teachers were asked about impediments to the development of teaching profession. More than 50% of the sampled teachers agreed that (The National Teacher Council, 1980:3):

1. The quality and the teaching efficiency of teachers are low.
2. Change in economics results in change in the image of teachers who used to be regarded as sacred persons.
3. There is no certain standard for the selection of teachers. Most people believe that any high school graduate, college graduate, or university graduate can seek a teaching job since there is no specific regulation relating to performance standards in this occupation.
4. Teachers are treated unequally. There is no real

professional organization to protect their rights and benefits.

5. There is a lack of unity in the training of teachers. They are trained by various institutions, making it difficult to maintain professional standards.
6. There is no job description for teachers. Some academic teachers are assigned to do secretarial work along with their teaching responsibilities. Some teachers are assigned to teach subjects for which they are not trained.
7. Teaching load of the teacher in the urban area is lower than that of the teacher in the rural area. There is no incentive to attract good teachers to go teaching in the rural community.
8. There is very little improvement in the area of teaching. Very few teachers use technological products to facilitate learning.
9. The social status of teachers is ranked low where compared to that of other professional organizations.

According to this survey, we can see that teachers are not satisfied with their own performance. They want to make their occupation more professionalized. They want to have someone to protect their rights and benefits and to speak for them when their rights or benefits are infringed. Importantly, they want to assure the society that educational services rendered by professional teachers are unique and reliable. In order to satisfy these demands and to minimize the impediments mentioned, the introduction of teaching certification to the Thai teacher administration would be appropriate.

Who Should be Authorized to Grant Teaching Certificates?. Cameron (cited in McCurdy, 1968:31) found that teaching certificates of Canadian teachers are granted by the Education Minister of the province. In the process, the certifying board is responsible for the nomination of qualified teachers who are entitled to different types of teaching certificates. The number and the component of this board varies from province to province. For instance, in Alberta, the Long Range Policy Statements concerning teacher training and certification state (ATA Handbook, 1982:172):

> Clause 2.8: A board representative of all institutions which prepare teachers, the Department of Education, the Department of Advanced Education and Manpower, the Alberta School Trustees Association, and the Alberta Teachers' Association considers all matters of teacher education and certification and advises the Minister of Education, the institutions which prepare teachers and all other groups or agencies which perform a part in the preparation and certification of teachers.

These policy statements authorize the board to make recommendations to the Education Minister concerning the certification of teachers. In addition, the board is also authorized to make recommendations concerning teacher training and preparation to responsive universities.

In Thailand, there is no law concerning teacher certification. However, the Educational Minister might be the most suitable person who should be authorized to grant teaching certificates.

Who Should be Entitled to Teaching Certificate?. In making the decision concerning the granting of teaching certificates, it is wise if the responsible committee or board consults the professional criteria proposed by Ryan and Cooper, as noted above. For this purpose, the responsible committee may create regulations specifying qualifications of eligible applicants and granting procedures. Although it might be unrealistic to expect all B.Ed. graduate's qualifications to meet Ryan and Cooper's criteria, the committee could be authorized to determine the number of criteria to be met by the applicant who applies for various types of certificate. For instance, the applicant whose qualifications meet criteria 2, 3, 8, and 2 others of these eight criteria may be entitled to the non-permanent certificate and be permitted to teach in the school for some certain period. Through this process, the teacher will have an opportunity to improve his teaching competencies.

Whose Teaching Certificate Should be Cancelled?. If it is accepted that teaching is a profession, it is necessary that members of this profession maintain their standards of performance and adhere to a professional code of ethics. If it is found that the professional member does not adhere to the code of ethics, the professional organization should be authorized to cancel his membership. The consequence would be ineligibility to pursue his professional career. Through this process, the society can be assured about the quality of services rendered by the professional teacher.

Since the certifying idea is only in its initial state, the society is not yet assured about the quality of service by means of certification. Therefore, some other personnel functions need to be considered. These include: appointment, tenure, promotion, and transfer. Details of these topics follow.

TEACHER APPOINTMENT

Na-nakon et al.(1983:35) define appointment as:

> Appointment is the act of appointing a person who passes the appointment or selection examination or a person who is selected by the appointment committee to the position. The person who is appointed must hold general and specific qualifications as stated in the law.

According to this definition, a person who seeks appointment to a teaching position is required to take an appointment or selection examination or otherwise be selected by the appointment committee. Also, that person must hold general qualifications as stated in Section 23 of the TRA (1980) and hold specific (or position) qualifications as stated in Teaching Position Standards. In addition, Section 44 of the TRA (1980) states "teaching positions shall only be designated by the Teachers'

Commission. No appointment shall be made if such a position is not priorly designated." In order to better understand appointment procedures, it is necessary that we understand the nature of teaching positions and responsibilities of each position.

Teaching Positions. Section 30 of the TRA (1980) categorizes teaching positions into three groups:

a) Teaching Positions. Teaching positions refer to the positions which require the position holders to teach in schools or educational institutions. These include:

1. Teacher I
2. Teacher II
3. Instructor I
4. Instructor II
5. Instructor III
6. Assistant Professor
7. Associate Professor
8. Professor

Positions (1) to (5) may exist in any type of institutions. But positions (6) to (8) may exist only in the degree-granting institutions.

b) Administrative Positions. These include:

1. Deputy Teacher Head
2. Teacher Head
3. Vice Principal
4. Principal
5. Deputy-Director of the School or College
6. Director of the School or College
7. Other equivalent positions as are determined by the Teachers' Commission.

c) Education-Related Positions. These include:

1. Student Inspector
2. Educational Supervisor
3. Deputy District Education Officer
4. District Education Officer
5. Deputy Provincial Education Officer
6. Provincial Education Officer
7. Deputy Regional Education Officer

8. Regional Education Officer
9. Deputy Head of the Office of Town Elementary Education
10. Head of the Office of Town Elementary Education
11. Deputy Head of the Office of District Elementary Education
12. Head of the Office of District Elementary Education
13. Deputy Director of the Office of Provincial Elementary Education
14. Director of the Office of Provincial Elementary Education
15. Deputy Director of the Office of Bangkok Metropolitan Elementary Education
16. Director of the Office of Bangkok Metropolitan Elementary Education
17. Some other equivalent positions as determined by the Teachers' Commission.

These positions are responsible for different kinds of jobs. For instance, the teacher who holds a teaching position is responsible mainly for teaching while the teacher who holds an administrative position is responsible mainly for the administration of the school and school personnel. Therefore, the appointment of teacher to different positions is done through different means. For the purpose of this study, the writer will focus only on the appointment of teachers who hold teaching positions.

The Appointment of Teachers to Teaching Positions. According to the TRA (1980), the person whose general and position qualifications meet the prescribed standards may be appointed to a teaching position through any of the following means: (1) appointment or selection examination (Section 36); (2) selection (Section 40); (3) the appointment of specialist or expert (Section 41); (4) the appointment of the municipal employee to the teaching position (Section 50); (5) the reappoinement of teachers who had been required to serve in the military (Section 51); (6) the reappointment of the teacher who was ordered to serve in another position by the cabinet (Section 53); (7) the reappointment of the resigned teacher (Section 54); and (8) the reappointment of the resigned municipal employee to the teaching position (Section 55).

1.THE APPOINTMENT OR SELECTION EXAMINATION

Normally, the person who seeks a teaching job is required to take an appointment examination or selection examination.[11] With regard to the appointment examination, Section 36 of the TRA (1980) states:

> Section 36: The appointment of the teacher may be done through the appointment examination and be based on examination performance.

Further, Section 38 of this act also states regulations concerning the administration of the appointment examination below:

> Section 38: The Teachers' Commission is responsible for the administration of the appointment examination of teachers.
> Under circumstances, the Teachers' Commission may delegate its power to the Department or Provincial Teacher Subcommission.
> The scope, the administration, and the judging criteria of the examination shall be stipulated by the Teachers' Commission

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[11] The applicant who takes an appointment examination is required to make at least 60% of the total mark, which is not required for those who take a selection examination.

In practice, these responsibilities are delegated to the Department or Provincial Subcommission. The Teachers' Commission determines only the scope of and the regulations concerning the administration of the exam. To date, the commission advises that the Civil Service Circular #1004/W15 dated September 9, 1975 be applied to the administration of teacher appointment examination. Details of this circular follow.

1. The scope of the examination. The appointment examination must cover three major areas: (1) Thai language and general knowledge (Thai essay 100 marks and general knowledge 100 marks); (2) knowledge for the position (major subject 100 marks and educational law 100 marks); and (3) interview (100 marks). The scope of the exam must be posted prior to the examination date.

2. The applicant registration. The person who wishes to take the appointment examination must register with the examination committee. Along with the registration, the applicant must submit: (1) one dozen black and white 2" photographs; (2) the diploma or certificate or transcript; (3) the approved photocopy of the census record; (4) the health record; and (5) documents regarding the change of name or last name.

3. Registration fees. The person who seeks a teaching position must pay registration fees which vary from time to time as determined by the Teachers' Commission.

4. The judging criteria. The applicant is said to pass the exam if his scores on each subject are not lower than 50% and the average scores are not lower than 60%. The applicant who scores higher is given priority.

Normally, the appointment examination is administered annually. One who is not appointed by the end of that academic year is required to take another appointment examination.

2. THE APPOINTMENT BY SELECTION

Section 40 of the TRA (1980) states (concerning the appointment by selection):

> Section 40: Under circumstances, the superordinate who has appointing power under the provision of Section 42 may appoint the teacher by selection. In such a case, he is required to follow standards of practice laid down by the Teachers' Commission.

To date, the commission has not yet stipulated its own standards, therefore the Civil Service Circular #1006/W16 dated September 9, 1975 is applied. This circular states:

> The authorized superordinate may appoint a civil servant by selection under one of these conditions:
> 1. that person received the government scholarship;
> 2. that person holds a rare specialization and is desired by the government organization;
> 3. that person graduated from the institution which is run by the government organization for its own purposes;
> 4. others as are approved by the Civil Service Commission.

Of these conditions, only (1)(2) and (4) are applicable to teachers. The person who received the government scholarship is normally appointed to the position right after his graduation. In other cases, the Director-General is required to get approval from the Teachers' Commission prior to making the appointment. Suwanrot (1981:24) adds that in all cases the new appointee is required to be on probation for the period of six months.

3.THE APPOINTMENT OF SPECIALIST OR EXPERT

Section 41 of the TRA (1980) states:

> Section 41: Under specific circumstances and for the benefit of the educational organization, the superordinate who has appointment power may request the Teachers' Commission to authorize such an appointment and to determine the position and salary schedule of that specialist or expert. After receiving the authorization, the superordinate who has appointment power under Section 42 may appoint the specialist or expert to the position by following the Teachers' Commission's standards of practice.

The appointment of specialist or expert is very rare. There is no standard of practice concerning this matter. The Director-General who wishes to hire an expert or specialist has to get authorization from the commission directly prior to the appointment.

4.THE APPOINTMENT OF THE MUNICIPAL EMPLOYEE TO THE TEACHING POSITION

Section 50 of the TRA (1980) states:

> Section 50: The appointment of the municipal employee to the teaching position is possible if the employee is willing to take the position and there is the teaching position available. In such a case, the superordinate is required to get authorization from the Teacher Commission. The position and the salary schedule shall be determined by the Teachers' Commission, but not to be higher than that of the teacher who holds similar academic backgrounds and experiences.

Therefore, the municipal employee who seeks appointment with the educational organization needs to approach the educational organization himself. If there is a position available and if the superordinate is willing to take him, that employee may be appointed.

5. THE REAPPOINTMENT OF TEACHERS WHO HAD TO SERVE IN THE MILITARY

Section 52 of the TRA (1980) states:

> Section 52: The teacher who had to serve in military service under the law concerning military service may be reappointed to the position after the completion of service. The reappointment may be done within one hundred and eighty days following the final day of service, and is required to follow the Teachers' Commission's Standards of practice.

The tenured teacher who is reappointed under this provision will be granted tenure automatically.

6. THE REAPPOINTMENT OF TEACHERS WHO WERE ORDERED BY THE CABINET TO SERVE IN OTHER POSITIONS

Section 53 of TRA (1980) states:

> Section 53: The teacher who got authorization from the cabinet to serve in any type of organization may be reappointed to his former position or the equivalent if the request for the reappointment is done within four years following the final day with the government service. In such a case, the duration of service with the new organization is counted for pension purpose. The superordinate who has appointing power under Section 42 may reappoint that teacher by following the Teachers' Commission's standards of practice.

In practice, very few teachers are ordered by the cabinet to serve in other organization(s) but the high ranking civil servants are.

7.THE REAPPOINTMENT OF THE RESIGNED TEACHER

Section 54 of the TRA (1980) states:

> Section 54: The superordinate who has appointing power under Section 42 may reappoint the tenured teacher who was granted a resignation to the teaching position by following the Teaching Commission's standards of practice.

In practice, most Departments attached to the Ministry of Education stipulate their own standards for practice. For instance, the Department of General Education (1981:34) stipulates that no reappointment of the resigned teacher who holds academic background lower than the Senior Diploma in Teacher Education may be made in schools located in Bangkok. The resigned teacher who seeks reappointment is advised to consult standards for practice of individual Departments.

8.THE REAPPOINTMENT OF THE RESIGNED MUNICIPAL EMPLOYEE TO A TEACHING POSITION

Section 55 of the TRA (1980) states:

> Section 55: The educational Department may reappoint the resigned municipal employee or others to the teaching position under the authorization of the Teachers' Commission. In such a case, the commission may consider benefits that the reappointee may contribute to the Department, and the comission may apply Section 50 to individual reappointees.

The reappointment of the resigned municipal employee or other to a teaching position is done under the discretionary power of the Teachers' Commission. The commission also determines the teaching position and salary schedule for the individual reappointee (Section 50).

The appointment is the first step of personnel administration of Thai teachers. They are appointed either by taking an appointment examination or by selection. In the latter case, the superordinate who has appointment power is required to follow standards of practice stipulated by the Teachers' Commission. However, standards of practice are very general. The superordinate may, practically, appoint or reappoint anyone whom he perceives beneficial to the Department. For instance, the Teachers' Commission will hardly refuse the request for a reappointment made by the Director-General. In most cases, except those who already have tenure, the new appointee or reappointee is required to seek tenure. Details of tenure practice follow.

TEACHER TENURE

The term 'tenure' is rarely considered by Thai teachers. Almost all of them receive tenure six months after their appointment date. With regard to this matter, Section 43 of the TRA (1980) states:

> Section 43: The teacher who is appointed to the position under Section 36 or Section 40 is required to be on probation as stated in the civil regulation. Prior to or on the final date of probation, the primary superordinate is required to submit the report concerning performance of the probational teacher to the superordinate who has appointing power under Section 42 to make decision about the granting of tenure or the termination of the appointment.
>
> After receiving the report of performance from the primary superordinate, the superordinate who has appointing power under Section 42 may look into the fitness to the position, disciplinarily and

> academically, of the probational teacher. If it is found that the probational teacher is not fit for the position, he may terminate the appointment immediately. If the authorized superordinate perceives that the probational teacher be granted another probation but not exceed the regulated time, the superordinate may order for another probation. If it is found that the probational teacher is fit for the position and that he completed his practising period, the superordinate is required to grant the tenure.
>
> The reappointee who has not completed his probation term but was put into military service is required to proceed with his probation when he is reappointed.
>
> The reappointee who was not granted tenure is required to begin his probation at his new teaching position.
>
> Those who are terminated during the probation period under any grounds (i.e. misconduct, incompetence, or unfitness to the position) may never serve as teachers. But this does not affect his previous performance and benefits.

According to this provision, every probational appointee is required to complete his practising period before being entitled to tenure. Those who are appointed by taking the appointment examination are required to be on probation for six months (Clause 2 of the Civil Service Regulation #3 (1975)). During the probational period, the non-tenured teacher is expected not to violate any teacher discipline. (The teacher disciplines are discussed in chapter VI). Even for a minor offence, the non-tenured teacher will be terminated without requiring any hearing (Clause 3 of the Civil Service Regulation #3 (1975)). Mr.AR's experience is a case in point. Mr.AR was appointed to a teaching position at ARR School. After three months of practising at this school, the Director of the School submitted a report to the Director-General saying "Mr.AR was absent from the class, misbehaved, and was unfit to the position" (the Department of General Education Order #1013/2522 dated March 22, 1979).

Upon receiving the report, the Director-General terminated Mr.AR's appointment.

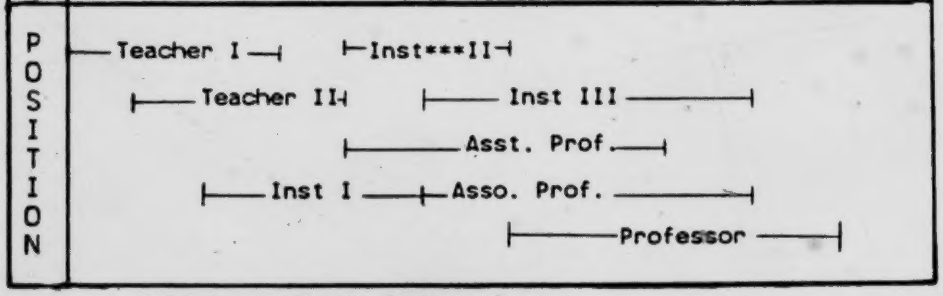
With regard to the awarding of tenure to the sucessful appointee, Clause 4 of Civil Service Regulation #3 (1975) requires that the non-tenured teacher who does not violate any discipline during the six-month period will be said to be a successful appointee, and then be awarded tenure. After the tenure is awarded, the tenured teacher enjoys all rights and benefits pertaining to teachers until his retirement date. He may get a higher position and a higher salary as required in the Teachers' Commission's regulations. Details of position and salary promotion follow.

TEACHER PROMOTION

The promotion of teachers is divided into two types: position and salary promotion. These two are related. The teacher who is promoted to the higher position is entitled to the higher payment. The teacher whose salary schedule is higher than others has greater opportunities to be promoted to the higher position. To illustrate the relations between position and salary schedules, the salary schedule of each position is presented in Table 1.

Table 1: Relations between Positions and Salary Schedules of Thai Teachers (1984).

	MONTHLY SALARY (BAHT*)										
SALARY LEVEL	3535										
	3325										
	3115										
	2905										
	2765										
	2625										
	2485	4685	5745	7285	9385						
	2345	4425	5465	6935	8895	12535					
	2205	4165	5205	6585	8475	11975					
	2065	3955	4945	6305	8055	11415					
	1950	3745	4685	6025	7635	10855	13095	14295	15575	16975	
	1865	3535	4425	5745	7285	10365	12535	13695	14935	16275	17745
	1780	3325	4165	5465	6935	9875	11975	13095	14295	15575	16975
	1695	3115	3955	5205	6585	9385	11415	12535	13695	14935	16275
	1620	2905	3745	4945	6305	8895	10855	11975	13095	14295	15575
	1545	2765	3535	4685	6025	8475	10365	11415	12535	13695	14935
	1470	2625	3325	4425	5745	8055	9875	10855	11975	13095	14295
	1395	2485	3115	4165	5465	7635	9385	10365	11415	12535	13695
	1325	2345	2905	3955	5205	7285	8895	9875	10855	11975	13095
	1255	2205	2765	3745	4945	6935	8475	9385	10365	11415	12535
C**	1	2	3	4	5	6	7	8	9	10	11



*18 Baht = CDN $1 (approx.)
**C = Civil Class
***Inst= Instructor

The table explains that the Teacher I teacher who is promoted to be a Teacher II teacher shall then be paid at least 2,205 baht/month no matter what his present salary is. Or the Instructor I teacher who is promoted to be an Instructor II teacher shall be paid at least 4,945 baht/month. However, in order to be entitled to the promotion, both the position and the salary, the teacher is required to hold some certain qualifications. Details of these two types of promotion follow.

The Position Promotion. Section 47 of the TRA (1980) (concerning the promotion of teachers) states:

> Section 47: The promotion of a teacher to a higher position may be done by means of competition or selection examination, or by means of selection.
>
> In each case, the superordinate is required to consult the Teachers' Commission's standards of practice.

For school teachers, the Teachers' Commission Circular #ST1502/W4 dated March 13, 1981 authorizes the superordinate under the provision of Section 42 to promote his subordinates to a position not higher than Teacher II at his own discretion. Suwanrot (1981:38), Director of the Personnel Division attached to the Office of the Teachers' Commission, advises that in discharging his discretionary power the superordinate looks into position qualifications and the current salary of individual teachers. For instance, the teacher who is to be promoted to Instructor II teacher should hold the B.Ed. degree or equivalent or be receiving a monthly salary not less than the minimum salary of Instructor II.

The promotion of Instructor III, Assistant Professor, Associate Professor, and Professor is done differently. In addition to the salary matters, the teacher who applies for such a position is required to possess some other academic qualifications. For instance, in order to be promoted to Assistant Professor, the Teachers' Commission Circular #ST1502/W18 dated September 12, 1983 cites qualifications of the teacher who is qualified for the promotion as:

1. must receive the monthly salary not less than the minimum salary of the Assistant Professor.
2. must hold these position qualifications:
   a. hold a baccalaureate degree in the field which is being taught in the college and has held Instructor I for not less than six years. Or hold a Master degree in the field which is being taught in the college and has held Instructor I for not less than three years. Or hold a Doctorate degree in the field which is being taught in the college and has held Instructor I for not less than one year;
   b. be teaching a course which is worth not less than two credit units in the college at the time of submitting the application. The teacher who seeks promotion to be an Assistant Professor is required to submit at least one publication related to the course; and
3. has produced one of these academic publications:
   a. The textbook or articles which are published in the accepted journal or periodical;
   b. a research study which is not part of the graduate or undergraduate program;
   c. any other academic work which is equivalent to (a) or (b).

Therefore, one who seeks a promotion to be an Instructor III, Assistant Professor, Associate Professor, or

Professor is required to have salary schedule, academic backgrounds, publications, and experience which meet standards stipulated by the Teachers' Commission. Except for the professor (who has to be promoted by the King), the authorized superordinate has power to promote the qualified teacher to the higher position.

The Salary Promotion. The tenured teacher who does not commit any disciplinary offence in the year is entitled to a single increment. With regard to this matter, Section 59 and 60 of the TRA (1980) state:

> Section 59:The following superordinates have authority to award increment(s) to teachers:
> 1. the Permanent Secretary for the teacher who holds the position which is equivalent to Class 10 or 11;
> 2. the Director-General of the Department for the teacher who holds the position which is equivalent to Class 9, 8, 7, or 6;
> 3. the Director-General of the Department or the official who is authorized to do so by the Director-General for the teacher who holds the position which is equivalent to Class 5 or lower;
> 4. the Director of the Office of the Provincial Elementary Education for the elementary school teacher who holds the position which is equivalent to Class 6 or lower.
>
> Section 60: In awarding the increment(s), the superordinate is advised to take into account the following factors: duties, responsibilities, performance, professional success, and individual industriousness. In addition, he is required to consult the Teachers' Commission's regulations concerning salary promotion.

To date, the Teachers' Commission has not yet enacted regulations on this matter, therefore the Civil Service Regulation #13 (1976) concerning salary promotion of civil servant is applied. Details of this regulation are summarized below.

1.THE REGULAR PROMOTION

The teacher who serves during the year (July 1st- June 30th) for not less than eight months is entitled to a single increment if:

a. his salary is not higher than the highest salary of his present position. For instance, the Teacher II teacher will be entitled to a single inecrement if his salary is lower than 7,285 baht/month;

b. he does not receive any disciplinary punishment in the year except the probation. If it is a demotion, such a punishment must have expired not less than six months prior to the regular promotion date;

c. he was not temporarily terminated during the year;

d. he was not absent from duties for more than 45 days. This excludes religious leave, maternity leave, and sick leave caused through performing his duties, and sick leave due to long term illness; and

e. he is an industrious teacher, which means he is rarely late for work and rarely absent from work without prior notification.

The teacher whose qualifications meet the above five criteria is entitled to a single increment.

2.THE SPECIAL PROMOTION

The teacher may be awarded a double increment if his qualifications meet those required for the single increment and the following:

a. his professional performance is excellent and he is regarded as a good exemplar to other teachers;

b. his professional duties endanger his life, (i.e. he is teaching in the insurgent area);

c. his professional performance is particularly beneficial to the government service;

d. he is a creative teacher and who devised instructional media which are beneficial to the Thai educational system;

e. he is regarded as an exceptionally industrious teacher; or

f. he is regarded as an exceptionally successful teacher.

By regulation, the teacher whose qualifications meet any of these six criteria is said to be entitled to a double increment. However, in practice, the government has a limited budget therefore only some of them get it. According to the Office of the Prime Minister Circular #SR0201/W95 dated July 29, 1975, these groups of teachers are entitled to a double increment:[12]

a. Fifteen per cent of the total number of teachers who hold Teacher I, Teacher II, and Instructor I in each educational organization are entitled to a double increment;

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[12] The Circular is partially reinstated in response to the new salary schedule.

b. Fifteen per cent of the total number of teachers who hold Instructor II and Assistant Professor in each educational organization are entitled to a double increment each year;

c. Fifteen per cent of the total number of teachers who hold Instructor III, Associate Professor, and Professor in each educational organization are entitled to a double increment.

This circular regulates the number of teachers who are entitled to the double increment in each school or Department. Therefore, not all who are qualified are awarded the double increment.

3.THE SUPER SPECIAL PROMOTION

Clause 6 of the Civil Service Regulation #6 states that the teacher may be awarded more than two increments if his qualifications meet those required for the double increment and the following:

> The civil servant may be awarded more than two increments in a year if his professional competence and intellect are exceptionally regarded. His professional performance is distinctive from that of the one who is awarded the double increment. Further, the awarding of more than two increments needs prior approval from both the Permanent Secretary and the Minister.

The awarding of more than two increments is complicated. The superordinate prefers to award not more than two increments to the individual teacher in each year.

4. THE IRREGULAR PROMOTION

The teacher whose qualifications do not meet criteria required for single, double, or more increments may be awarded a single increment if he is categorized in any of these groups:

1. The new appointee. The newly appointed teacher whose duration of service is less than eight months may be awarded a single increment if (Clause 7(7)):
   a. he was appointed to the position on a Monday and his duration of service to September 30th[13] of that beginning year is only two days less than eight months (Somboonsin, 1981:66); or
   b. his duration of service to September 30th of that beginning year is more than 7 months and his supervisor perceives that that teacher is entitled to a double increment (Somboonsin, 1981:66).
2. The on-leave teacher. The teacher who was on study leave within the country or abroad, was on study and observation leave abroad, or was on sabbatical abroad and served in the school less than eight months may be awarded a single increment if (Clause 7(8)):
   a. his duration of service up to September 30th of that year is not less than eight months (returning to his school by February 1st); or
   b. his duration of service up to September 30th of that

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[13] The Thai budgetary year begins on October 1st

year is less than eight months but more than seven months (returning to work by February 28th) and his primary superordinate recommends him for a double increment (Somboonsin, 1981:67).

Further, the teacher who was granted an observation leave or a sabbatical within the country, even it is longer than four months, is still entitled to regular increment (The Civil Service Commission Circular #SR0710/W26 dated November 16, 1977). In other words, the teacher who goes on observation leave or sabbatical is entitled to salary promotion as if he were on regular duties.

3. The teacher whose salary is equal to the highest level of his position. The teacher who is categorized in this group may be entitled to a single increment if he is promoted to the higher position prior to the promotion date, or is recommended for such a single increment by the Teacher Commission (Somboonsin, 1981:68).

4. The disciplined teacher. The teacher who was investigated disciplinarily may be entitled to a single increment if the punishment to that teacher is not higher than the probation (Somboonsin, 1981:70).

5. The teacher who served in the military. The teacher who served in military service may be entitled to one single increment per year during the period of his service if he returned to the office within fifteen days after completing the term of service without guilt (The

Civil Circular #SR0711/W12 dated August 8th, 1979).

Position and salary promotion are vital. They bring either disunity or efficiency to educational organizations. Since the Civil Service Regulation #13 regulates that the awarding of increments, single, double, or more is to be done confidentially by the superordinate, it is difficult to know if the superordinate properly consulted the criteria laid down by the Teachers' Commission. In many educational organizations, the superordinate has a difficult time in handling his staff during the early period of the promotion session.

The promotion is considered as a reward to attract teachers to the teaching profession. It is also used as a motivator to motivate teachers to put more energy and effort into their tasks. In addition to promotion opportunities, the teacher who is unhappy with his present position may request a transfer under the regulations concerning the transfer. Details of the transfer procedure follow.

TEACHER TRANSFER

The transfer is a component of teacher personnel administration. The teacher may be transfered from one school to another school within his Department or from one school to another which is attached to other Department. With regard to this matter, Section 46 and 49 of the TRA (1980) states:

> Section 46: The teacher may be transfered within the Department from one position to another position which is not higher than the former one. The transfer of the teacher to the lower position may be done if such a transfer has prior approval of the Teachers' Commission.
>
> Section 49: The teacher may be transfered from one Department to another Department if such a transfer is agreed upon by the Directors-General of both Departments. The teacher who is transferred under this provision shall not be appointed to the position and salary which are higher than his former ones.

These two provisions state only general conditions and procedures for the transfer of teachers. The Department may further stipulate detailed guidelines for its own practice. Although there might be some differences in details, most Departments' guidelines contain the following similarities. (Department of General Education's Teacher Handbook:1981; Department of Teacher Education's Teacher Handbook:1981).

Type of the Transfer. The transfer is divided into two categories: within the Department and from one Department to another. The transfer within the Department is subdivided into three: (1) the regular transfer; (2) the special transfer; and (3) the arbitary transfer. The regular transfer may be done only before the beginning of the academic year. The teacher who wishes to request a transfer is required to fill out the request form and submit it to his primary superordinate, and then to the Director-General at the time stated in the individual Department's circular. After reviewing reasons supporting the request, the Director-General who has appointment power or the authorized official may grant a transfer to the teacher.

The special transfer may be granted to the teacher whose spouse is ordered by the cabinet to take a position in another province, city, or municipality. The teacher who wishes to request this type of transfer may fill out the form and submit it along with supporting documents to his superordinate. The special transfer may be granted at any time of the year.

The arbitary transfer is the transfer which is initiated exclusively by the superordinate. The teacher is not required to fill out the request form prior to obtaining the transfer.

The transfer of the teacher from one Department to another Department is more complicated. It has to be decided by the Directors-General of both Departments. Therefore, the teacher who wishes to request a transfer from one Department to another Department is advised to consult Directors-General of the involved Departments. This type of transfer may be granted at any time of the yaer.

Steps in Requesting Transfer. Except for the arbitary transfer, the teacher who wishes to receive a transfer is required to fill out the formal request form which is available at most schools and then submit the form to the primary superordinate, the school principal. After receiving the form, the primary superordinate is required to forward the form to other senior superordinates up to the

Director-General. For the regular transfer, the form should arrive at the Department not later than September 30th of the year so that the superordinate has enough time to study the request and to grant the transfer prior to the beginning of the school year (early May or June). In other cases, the superordinate may grant a transfer upon request.

Based on this discussion, one can see that in most cases the superordinate has discretionary power to grant a transfer to his subordinate. Many teachers believe that in order to receive a requested transfer the individual teacher should develop a close connection with his superordinate. The teacher who wishes to receive a transfer struggles to make appointments with the superordinate or with those who have a good connection with the superordinate during the transfer session. The Director-General wastes a lot of time in explaining reasons for not granting the transfer.

SUMMARY

The idea of teacher certification in terms of a licence to teach is not yet in practice in Thailand. University or college graduates whose qualifications meet criteria laid down by the Teachers' Commission can seek teaching jobs with Thai educational organizations. The National Teachers' Council which is supposed to be responsible for the improvement of teaching profession has nothing yet to do with this matter. Therefore the quality of teaching performance relies heavily on teacher training institutes.

Since certification is not yet required, Thailand employs several tools to select good teachers. The appointment examination is the most popular tool. It is used by all educational organizations. However, in order to be qualified for the exam, the person who seeks appointment needs to have general and positional qualifications which meet standards stipulated by the Teachers' Commission. The general qualifications are basic requirements for all who seek government jobs. The positional qualifications are required for the person who seeks an individual position. For instance, the person who seeks an English teaching position in Grade 11-12 is required to have a bachelor's degree in English (could be B.A. English or B.Ed. English) and have general qualifications as stated in Section 23 of the TRA (1980). Retaining all of these qualifications, the person who does best on the appointment examination will be appointed. The college or university transcript and the letter of recommendation do not help the person to get the teaching job.

After being appointed, the new appointee is required to practice teaching for six months. During this period, he must adhere stricty to teacher's regulations. A minor disciplinary offence may lead to a termination without a hearing. However, if no disciplinary offence is observed, the teacher will be granted tenure after these six months.

He will then enjoy rights and privileges pertaining to tenured teachers.

The tenured teacher is entitled to position and salary promotion. Both the salary and the position are related. Higher position means higher salary. However, in promoting the teacher to the higher position, the superordinate normally looks into present salary, positional qualifications (academic backgrounds), experiences, and positional fitness of each subordinate. The teacher whose qualifications best meet the requirements of the position will be promoted.

In the area of salary promotion, the cabinet advises that the primary superordinate confidentially nominate those of his subordinates who are entitled to increments. Although guidelines concerning the awarding of increments are laid down by the Teachers' Commission, the confidential nomination creates suspicion among teachers.

Finally, the teacher who wishes a transfer requests the transfer from his superordinate. Since the law concerning the transfer is vague, the Director-General is the one who has discretionary power to grant the transfer to the teacher.

Although certification, appointment, tenure, promotion, and transfer are vital components of personnel administration, there is no recorded disciplinary case regarding these matters in the period reviewed for this study. The explanation could be that most teachers understand the legal relations between themselves and their superordinates, that they do not know legal relations between themselves and their superordinates, that they are obedient to their superordinates, that they are subject to the karmic law of rebirth, or that they believe in a Thai proverb which reads "Do not use the toothpick to move the lumber".

CHAPTER VI

TEACHER DISCIPLINES

The "discipline" is the major component of personnel administration of Thai government officials. It is a criterion determining the legal status of teachers and collectively, disciplines can also be used as standards of teaching practices. In this chapter, the writer discusses teacher disciplines and disciplinary procedures. Included are: 1) definition of discipline, 2) the components of disciplinary procedure, 3) punishment procedures, 4) disciplinary laws, 5) removal procedure, 6) appeal procedure, and 7) grievance procedure.

DEFINITION OF DISCIPLINE

Arai Ingkawanit (cited in Yanyong Kambanrue, 1981:25) defines "discipline" as:

> The discipline is a written rule or regulation. It regulates discernible behaviors such as conduct or speech of human beings. One who violates the discipline will be condemned or punished. The punishment to the violator shall be a fine, probation, salary cutback, salary demotion, or removal.

It is interesting to note that the above definition does not specify sources of the discipline. The sources are as varied as the organizations that develop and enforce them for organizational members. Kanchanadul explains the development procedure of the Thai Civil Service Discipline below (1980:45-46):

> An individual who serves in the government organization such as a school, the military, or a prison has special committment to obey disciplines of such institutions. He has to behave himself according to disciplines of the institution in which he works. For instance, the government official has to be under control of the government. The student has to be under control of the school. The soldier has to be under control of the army. This type of relation prescribes those who put themselves into such positions to adhere to disciplines without prior consent.

According to this explanation, all government officials (including teachers) are obliged to adhere to disciplines which are developed wholly by the executive. Government officials have no right to participate in the development of disciplines. The most they can do is to lobby the discipline makers.

Focusing on some particular groups, Na-nakon _et_ _al._ (1982:1) define 'civil servant discipline' as "the written standards that guide and control behaviors of civil servants". The definition differs from actual practice in the sense that the civil servant disciplines do not always both guide and control behaviors of Thai civil servants. Some written standards are aimed only at guiding behaviors but ignore prescribing punishments for violations of the standards. For example, the issuing of an illegal appointment order makes such an order void. But the illegality does not automatically lead to punishment of the issuer. He is required only to issue a revised, legal appointment order.

Silapa-anant (1982) defines 'teacher discipline' as:

> The teacher discipline refers to fundamental standards of teaching performance. For example, it is required that teachers teach at scheduled hours, consult the education Ministry's curriculum, employ the suggested teaching methods, evaluate students under the education Ministry's standards, continually improve their own teaching performance, and behave according to the teacher code of ethics.

This definition is similar to that of the civil servant's discipline. It guides and controls behaviors of teachers. Teachers are required to consult their disciplines in performing their teaching duties. The superordinate is required to consult the discipline in issuing a punishment order. According to this definition, the discipline is considered a process requiring cooperation from all participants. The government acts as the discipline-maker; the teacher consults the developed discipline; the superordinate of teachers controls and guides his subordinates in accordance with the discipline. In other words, the superordinate encourages his subordinates to adhere to the discipline and punishes those who violate it. However, presently, Silapa-anant (1982) observes that most superordinates tend to "control" but not to "guide."

> Talking about disciplines, most superordinates focus their attention at demeaning behaviors such as gambling, drinking, or adultery which should be considered as minor matters, but pay less attention to demeaning teaching habits, e.g., absence from teaching duties, no consultation with the educational Ministry's curriculum, inattention to evaluation of student's work.

According to this explanation, superordinates have some misunderstanding about discipline. Many understand discipline in the controlling sense but very few understand it in the guiding sense. The concepts of guiding and controlling are important to the development of an understanding of the legal status of Thai teachers. Accordingly, the two terms are addressed below.

Guiding and Controlling Procedures. Na-nakon et al. (1982:167) suggest that:

> The guiding procedure should begin with good recruitment and selection. The government needs to put the right person in the right position. Staff need to improve themselves continually. Superordinates need to prevent their subordinates from violating laws and regulations. They need to create good working environments and encourage their subordinates to adhere to disciplines.

In recruiting and selecting, Section 23 of the Teacher Regulation Act 1980 states that persons who wish to be recruited must possess prescribed general qualifications. In addition, they must possess special qualifications which meet positional standards for each particular position.

Good recruitment and selection, however, are not in themselves sufficient to strengthen desirable behaviors of teachers. The superordinate needs to organize orientation programs for and provide advice on disciplinary matters to his subordinates. He needs to organize staff development activities on disciplinary matters for his subordinates. Na-nakon et al. (1982:170) suggest:

> Superordinates at all levels need to orientate newly appointed officials to laws and regulations relating to the operation of the government office. Subordinates should be orientated to know their rights and duties, especially those which are assigned to them as a government official. They should attend staff development activities which help them realize their duties and responsibilities. They should be trained to be capable to perform their duties.

With regard to teachers, Silapa-anant (Interview: March 10, 1982) admits that "currently, the Ministry does not perform its entire personnel functions. Activities of the Ministry deal only with recruiting, selecting, and promoting. None are concerned with staff development".

In addition to guiding, the superordinate needs to supervise the adherence to disciplines of his subordinates. Whenever a violation is observed, he needs to take consistent disciplinary action against the violator. King Rama VII (1980:13 reprint) reminds the superordinate here:

> Excessively compromising behaviors of the superordinate are unacceptable. Many who employ compromise believe that the compromise could secure love or loyalty which in fact is incorrect. Compromises could lead to disdain and disrespect. They make the superordinate lose directing and controlling power.

In taking disciplinary action against the violator, however, the superordinate is required to follow disciplinary procedures devised by the Civil Service Commission. Details of these procedures follow.

THE COMPONENTS OF DISCIPLINARY PROCEDURE

Na-nakon *et al.* (1982:237) define the disciplinary procedure as:

> The disciplinary procedure refers to all steps required by the law in taking disciplinary actions against the accused civil servant. These steps include the summary of grounds of offence, the fact-finding and investigation process, the weighing of the degree of severity of the offence and the level of punishment, the imposition of punishment, and some other steps (e.g, temporary suspension or civil actions) imposed against the accused civil servant during the period of investigation.

The definition explains that the disciplinary procedure consists of several steps. Details of each component of the disciplinary procedure follow.

The Accusation. Sa-nguanpong and Boonset (1980:2) claim that most teacher accusations come from four major sources: 1) an anonymous letter, 2) newspapers or periodicals, 3) other accusers and colleagues, and 4) the superordinate.

The anonymous letter refers to accusing statements produced by an undisclosed person. Some anonymous letters are signed with aliases and mailed to the superordinate. In the past, it was found that most anonymous letters were petty and many of them led to disgruntlement among government officials. Therefore the Council of Ministers advised that the superordinate pay attention only to those letters which contained sufficient evidence (The Council of Ministers Circular #NW 148/2502).

Newspapers and periodicals are other sources of accusation. Many editors publish corruption and bribery news in their papers or periodicals. Senior government officials normally require support staff to monitor corruption and bribery news from newspapers and periodicals.

Another source of the accusation is the individual accuser. This can be a government inspector, a community member, a pupil, or another staff member.

The last source of the accusation is the superordinate himself. If he suspects that the subordinate is violating a discipline, the superordinate is required to name a fact-finding committee to investigate the case (Section 82: the Civil Service Regulation Act 1975). Details of fact-finding procedures and the summarization of evidentiary grounds follow.

Fact-finding Procedures and the Summarization of Evidentiary Grounds. Whenever it is suspected that a teacher violates a discipline, the disciplinary law requires that the superordinate name a fact-finding committee to look into the case (Section 82:the CSRA 1975). Na-nakon *et al.* (1982:238) cite requirements for this step:

> The disciplinary action, even it is on petty matters, can affect morale of the civil servant and cost the government some money. For instance, the accused civil servant will be criticized and looked down upon by others. It affects working morale of staff. For the government, disciplinary process costs a lot of money. And during the investigation period the government loses its manpower.

Therefore, it is expected that the superordinate collect all facts relating to the accusation before conducting the investigation even if they are not required to do so by the law.

Fact-finding is an important step in taking disciplinary action against the teacher. The summary of evidence made by the committee determines official life of the accused. If the accusation is supported by the collected facts, the next step of disciplinary action, the investigation, is usually undertaken. In some cases, when the superordinate perceives that the accusation is of a personal nature and that it could be solved through compromise, the superordinate may suggest a compromise. Mr.AL's case exemplifies this disciplinary procedure.

> *Mr.AL married Mrs. ALB in the common law marriage. A year later, the two decided to separate. The separation was done before the district official at the district hall. The two were satisfied with conditions set by one another. A year later, Mrs. ALB found that the conditions set previously were unjust. She requested either a reunion or more money which was at that time refused by Mr.AL. She took the case to the Provincial Education Officer and then to the Governor. Upon receiving the accusation, the Governor dictated (The confidential letter #PB23/4 dated November 11th, 1977):*
>
>> *If the accusation is true but can be brought into a compromise, please bring the two into compromise then ask them to sign their names on the appropriate document. However, if it cannot be resolved, you (the sheriff) may use your discretionary power to take disciplinary action against Mr.AL and then report the action to me(the Governor).*

After all facts are collected, in the event a compromise procedure is not indicated, the superordinate will review the facts and decide if a disciplinary action is to be taken against the accused. If the accusation is supported by collected facts, the evidentiary grounds will be stated. In stating the evidentiary grounds, Na-nakon *et al.* (1982:248) suggest:

> Be advised that accusative statements are not disciplinary statements. They are details about offending behaviors. Therefore, in producing accusative statements for each case, the superordinate should state offending behavior committed by the accused civil servant but not the disciplinary statements included in the disciplinary law.

Saeng-in (interview: March 16:1982) further explains:

> We do not produce accusative statements by citing disciplinary statements. We apply the discipline to the offence after the investigation. This problem has become a long-time argument among legal personnel. The Civil Service Commissioner formerly asked us (legal persons) to cite disciplinary statements and the provision of law that could be violated by the accused. I disagree with this. I believe that in disciplinary matters, we can apply the disciplinary grounds and the provisions of law to the case after the investigation. We can apply any provision of law that is deemed appropriate. The Ministry of Interior practices in this matter differ from the Ministry of Education. That Ministry states disciplinary grounds and the provisions of law in producing an accusation statement.

In practice, to ensure that the accused official is punished, the superordinate normally produces as many as possible of the laws and regulations that may have been violated by the accused official. For instance, in Miss K's case (Department of General Education: 1979), the superordinate accused her of committing fifteen different offences. These include: 1) being in improperly dressed, 2) being often late to work, 3) being disobedient, 4) leaving the school ground without permission, 5) being often absent from teaching duties, 6) criticizing her colleagues before students, 7) being insubordinate to the Department Head, 8) taking students to unproper places, 9) discouraging students from taking religious courses, 10) collecting money from students illegally, 11) being excessively in debt, 12) using inappropriate language with students, 13) being absent from work without prior notification, 14) requesting students to mark final exam papers for her, and 15) collecting tutorial fees from students without actually tutoring.

After the accusation statement is produced, the next step of disciplinary procedure, the investigation, is initiated.

The Investigation. Na-nakon et al.(1982:249) define the term as follow:

> The investigation is the process of evidence collection and some other undertakings which help the superordinate attain relevant facts. Through this process, the superordinate will be able to determine if the accused official is guilty or innocent.

The investigation normally takes place after the accusation. It purports to secure further details which have not been brought out in the fact-finding stage. It also provides opportunity for the accused to bring forth evidence to challenge the accusation. Na-nakon et al. (1982:249) divide the investigation into two categories: 1) the informal investigation and 2) the legal investigation.

The informal investigation. The informal investigation is the investigation which is not required by the law and is applied only to the non-severe disciplinary case. The superordinate only names the inquiring committee to look into the case, then issues the punishment order to the offending teacher. The accused teacher has no opportunity to provide evidence to dispute the accusation.

The legal invesigation. A legal investigation is required for a severe case. With regard to this, Section 86 para 2 of the CSRA 1975 states:

> Whenever the civil servant is accused of committing a severe offence and the accusation is supported by evidence, the superordinate under Section 44 is required to name the investigation committee to investigate the case immediately. In the investigation, the committee is required to notify the accused official of all accusation statements and evidence collected in the fact-finding stage. The committee is required to provide opportunities to the accused to challenge the accusation.

The committee members have to be government officials and the committee must be composed of at least three members. Of the three, one must be named to chair the investigation, and this person is required to hold a position not lower than the accused official (teacher).

At the provincial level, the Governor normally names the Provincial Education Officer to chair the investigation. Very often the Provincial Education Officer is requested to recruit the committee members for the Governor and to make recommendations concerning the offence and the level of punishment. Briefly, the Provincial Education Officer acts as the investigator and the executor of the case. After all relevant facts are secured, the committee is required to meet to summarize the case and make recommendations to the superordinate concerning the offence and the level of punishment, if appropriate.

The Summarization of the Investigation. Clause 22 of the Civil Service Regulation #6 (1975) states:

> After relevant facts are secured, the committee is required to call for a meeting to summarize the case and to make recommendations to the superordinate. In the summarization, the committee is required to summarize all relevant facts and make recommendations to the superordinate. In the recommendations, the committee is required to provide reasons to support their recommendation. If the accused official is guilty, the committee is required to indicate the law violated and recommend the level of punishment. If some disagreements arose during the meeting, such disagreements must be presented to the superordinate. At least three members of the committee are required to attend the summarization meeting. If the chairperson is not available, one available committee member shall be elected to chair the meeting. Recommendations made are based on majority votes. If the vote by both sides is equal, the chairperson shall decide the vote.
>
> The investigation is complete when the report of investigation is presented to the superordinate.

According to this provision, the investigation committee is to: 1) summarize all secured facts and evidence, 2) determine whether the accused official is guilty or innocent, 3) produce reasons to support its decision, 4) make recommendations concerning the provision of law which can be applied to, and 5) make recommendation concerning the level of punishment to the superordinate. In addition, some committees suggest reasons for punishment reduction and include them in the report. In most cases, recommendations made by the committee are adopted by the superordinate.

In addition to the investigation procedure, the writer perceives that there are two other topics which are not included in the disciplinary provision but are related to the legal status of teachers. These two topics are: 1) expiry date and 2) the role of the National Teachers' Council in assisting the accused teacher. Discussion on these two topics follows.

Expiry Date of Disciplinary Cases. In civil and criminal cases, the law prescribes the expiry date of the claimant. But in disciplinary matters, the expiry date is not specified. The only provision which is slightly related to this matter states:

> Section 89: When any official is accused of violating disciplines which are considered severe or be accused of committting a crime(s), unless such a crime is due to negligence or is a petty offence, the superordinate may take disciplinary action against that official any time even though the official has already retired. This provision does not apply after death of the official.

According to this provision, the authorized superordinate may bring a disciplinary case against the retired teacher, if the violation is severe. But there is no other provision specifying a prosecution date for the non-severe case, and therefore, the above provision is also applied in such cases.

The Role of the National Teachers' Council in Assisting the Accused Teacher. Although Section 6 of the Teachers' Act 1945 (revised 1980) states that the National Teachers' Council has a duty to protect rights and benefits of teachers, the National Teachers' Council rarely becomes involved with disciplinary matters. Disciplinary cases are handled totally by the superordinate. The teacher has difficulty in finding good advisors. Saihong (1982) explains that:

> In fact, they (accused teachers) are to be pitied. Accused teachers do not know how to challenge the accusation. The person who knows disciplinary procedures and could give them advice is the one who is going to punish them. However, if they really need help, they should be able to find it, one way or another.

Somaya (1982) suggests that it would be inappropriate for the government organization or the superordinate to provide legal counselling services to the accused teacher. The National Teachers' Council should do it.

THE PUNISHMENT PROCEDURE

Na-nakon *et al.* (1982:451) define disciplinary pu[illegible]hment as:

> Disciplinary punishment is a tool regulating behavior of government officials. It is a component of the disciplinary process. Under this process, the offending official will be punished. As a result, it deters the well behaved from violating disciplines.

The definition explains that two major aims of disciplinary punishment are to quell the violator and to deter the innocent. In the following section, the writer discusses procedures in issuing a punishment order. However, to extend the reader's perception on this matter, some other related topics will also be included. These topics are: 1) levels of the punishment, 2) power of the superordinate in issuing a punishment order, 3) causes of punishment reduction, and 4) the role of the National Teachers' Council in assisting disciplined teachers.

__Levels of Punishment__. Section 83 of the CSRA 1975 lists levels of disciplinary punishment below:

> The levels of disciplinary punishment consist of:
> (1) probation;
> (2) salary cutback;
> (3) salary demotion;
> (4) termination;
> (5) put-out of service; and
> (6) dismissal.

Of the six categories, probation is the most merciful punishment while dismissal is the severest. Section 85 of the CSRA 1975 explains about the probation below:

> Probation should be issued to the offender who committed petty offences or to those whose level of punishment, after considering reasons for punishment reduction, is lower than salary cutback.

The salary cutback and the salary demotion are the levels of punishment which are more flexible than any other levels. For instance, the salary cutback is subdivided into six levels: 5 percent in one month, 10 percent in one month, 10 percent in two months, 10 percent in three months, 10 percent in four months, and 10 percent in six months. Or, if deemed appropriate, the superordinate may determine this level of punishment differently, after weighing the nature of the offence. Similar to the salary cutback, the salary demotion is subdivided into one-step and two-step demotions, depending upon severity of the offence.

The termination is the level of punishment which is more severe than the salary demotion. The teacher who receives this level of punishment is removed from the school (Section 94(5):CSRA 1975). Further, according to Section 23(12) of the TRA 1980, the person terminated under this or other similar acts is unqualified to apply for teaching jobs unless he is granted an exemption by the Teacher Commission after two years of termination. However, the terminated person is entitled to a lump-sum pension if he has served in the office longer than one year (Section 8 and 15 of the Pension Act 1951).

Being put out of service is the next more severe level of punishment. The teacher who is put out of service will be removed from the school (Section 94(5) of CSRA 1975). He will be unqualified to reapply for teaching or government jobs unless he is granted an exemption through a unanimous and confidential vote by the Teachers' Commission two years after being put out of service (Section 23 (12): TRA 1980). The person who is put out of service is not entitled to a government pension (Section 8 and 15 of the Pension Act 1951).

The dismissal is the most severe disciplinary punishment. The person who is dismissed will be removed from the school (Section 94(5) of the CSRA 1975). He will be viewed as an undesirable person by the public. The person who is dismissed on the grounds of dishonesty or absence from work for more than 15 days without acceptable reasons will be definitely barred from the school (The Council of Ministers Circular #NW 43/2504: dated May 12, 1961). However, those who are dismissed for other reasons may reapply for a government job if they are granted an exemption through a unanimous and confidential vote by the Teachers' Commission three years after the dismissal (Section 23(13) of the TRA 1980). The dismissed teacher is not entitled to a government pension (Section 8 and 15 of the Pension Act 1951).

Of the six levels of punishment, we may recategorize the level of punishment according to the degree of severity into three categories: 1) the petty level, 2) the non-severe level, 3) the severe level. The petty category includes punishments assigned to the offender who violates regulations but whose behavior does not cause damage to the government organization. Probation is the only punishment categorized as petty. The teacher who is probated is entitled to a yearly increment (Clause 7(2) of the Civil

Service Regulation #13).

The non-severe level is the level of punishment which includes salary cutback and salary demotion.

The severe category is the punishment assigned to the teacher who is viewed by the government as expendable. The levels of punishment included in this category are termination, putting out of service, and dismissal.

In making decisions concerning the level of punishment, it is required that the superordinate be fair and impartial.

Punishment Power of the Superordinate. Section 85 and 86 of the CSRA 1975 state that only the superordinate has power to impose punishment upon the offending subordinate. Table 3 depicts the level of punishment and the authorized superordinate for non-severe cases (Civil Service Regulation #5: 1975).

According to this table, the Teacher Head may impose a probation, a one-month five-percent salary cutback to the offender while the school principal or the school director may impose probation, a one-month five-percent salary cutback, a one-month ten-percent salary cutback to his offending subordinates.

Table 2: Showing Punishment Power of Each Superordinate.

Superordinate	Levels of Punishment			
	Probation	Salary Cutback		Salary demotion
		%	Duration	
Teacher Head	X	5%	1 month	
School Principal or Director of School	X	10%	1 month	
Director-General or Governor	X	10%	4 months	1 step
The Prime Minister, the Minister, or the Permanent Secretary	X	10%	6 months	2 steps

The imposition of punishment order depicted is for the petty and the non-severe cases. For the severe case, Section 86 of the CSRA 1975 lists punishment procedures below:

> 1. For the civil servant who holds a position lower than Class 11 in the central or regional government organizations, the Prime Minister, under the provision of Section 86 para 3, or the superordinate who has appointment power under the provision of Section 44, is required to convey the report of investigation to the Ministry Civil Service Subcommission for consultation. After the consultation, the Prime Minister or the superordinate is required to issue the punishment order accordingly...

For teachers, Section 61 of the TRA 1980 states that the Department Teachers' Subcommission acts on behalf of the Ministry Civil Service Subcommission. Therefore, in severe cases, the Prime Minister, or the superordinate who has appointing power under the provision of Section 42 of this act is required to convey the report of investigation to the Department Teachers' Subcommission for consultation. He is also required to issue the punishment order as it is recommended by the Subcommission.

In the past, the punishment power confused many superordinates. Some imposed punishment orders where legally they did not have power to do so. Some altered the level of punishment where in fact such an alteration was illegal. The following cases should broaden our perception on this matter.

> **Mr.F's case.** *Mr.F, a high school teacher, promised five villagers to help their children to get teaching jobs. In exchange for the promise, the villagers paid Mr.F 3,000 baht each. The promise was not kept. The villagers demanded reimbursement but were unsuccessful. They therefore brought the case to the Governor. The Governor named the comittee to investigate the case. After consulting with the Provincial Civil Service Subcommission, the Governor dismissed Mr.F (The Province of Seesaket Order #SK 1939/2521 dated September 29, 1978). After the dismissal, the Governor reported the punishment to the Director-General. The Director-General reviewed the case and found that the Governor had no authority to dismiss the teacher. He therefore requested the Governor to withdraw the dismissal order.*
>
> **Mr.Z's case.** *Mr.Z, a high school teacher, collected 150 baht from each grade XII student. He promised that he would purchase warm suits for them. After the time passed by, some students did not receive the warm suits. Parents of these students demanded reimbursement but were unsuccessful. They brought the case to the Governor. The Governor ordered an investigation. After the investigation, the school*

> *principal issued a probation to Mr.Z (The School Order #11/2521 dated January 30, 1978). Together with the probation order, the principal ordered Mr.Z to purchase warm suits for the remaining students or reimburse them. Mr.Z failed to comply with the order. Another complaint was brought to the Governor. The Governor again ordered the school principal to investigate the case. After the investigation, the principal issued another probation to Mr.Z, then presented the report of punishment to the Governor. In reviewing the report, the Governor's secretary detected some legal errors on the probation order. She therefore notified the principal to correct the errors before passing the report to the Governor. At this time, the principal realized that the level of punishment issued previously to Mr.Z could be inadequate. He therefore altered the level of punishment where legally he had no power to do so.*

Reasons for Punishment Reduction. The disciplinary law does not specify clearly the reasons for punishment reduction. Different Departments attached to the Ministry of Education employ different standards in granting punishment reductions to their teachers. Sa-nguanpong and Boonset (1980:22) explain that the Department of Vocational Education consults reasons for punishment reduction as stated in Section 78 of the Thai Criminal Code. They also confirm that the punishment reduction awarded to the offender will not be more than half of the total punishment. Saihong (1982) explains that the granting of punishment reduction practised in the Department of General Education relies mostly on the discretionary power of the superordinate. He asserts that the reason for punishment reduction cited in the past is similar to what is included in Section 56 and 78 of the Thai Criminal Code. For instance, the reasons for reduction most often cited are previous good deeds, being a novice, being under deep sorrow, confessing before the investigating committee, poor mentality, and negligence. But personal causes (e.g. being a friend of the legal person or the superordinate, giving good treats to the investigating committee or other related persons, or giving bribes to the investigating committee or the superordinate) will not help reduce the level of punishment.

At the Ministry level, Saeng-in (1982) explains that the Ministry sometimes consults reasons for punishment reduction as are stated in the Thai Criminal Code. However, in some specific cases, the Thai Criminal Code is not applied, especially, for those which are stated clearly in the Council of Ministers circulars. He further illustrates the inapplicability of the reasons for punishment reduction to some cases (Saeng-in: 1982):

> At Nang-rong school, the school principal was accused on the grounds of playing gambling cards. In the investigation, he confessed that he did play cards for gambling. He even gambled with his superordinate who visited the school on occasion. But he denied that he persuaded 18 of his 22 staff to join in the card gambling even though it was confirmed by these 18 staff. He also confessed that he had gambled for several years, that he often stayed overnight playing cards, and that he was often late at work as were his staff. At the Department level, the Director-General issued a written warning to the principal and explained that many high-ranking officials were also gambling at cards and that the principal should receive only a written warning. I reviewed this case carefully and found that there was a Council of Minister's Circular which stated that a dismissal be given to the official who gambles at cards. I therefore recommended to the Permanent Secretary that the principal be dismissed.

> The Permanent Secretary ordered a termination. I was blamed by the Director-General for making such a recommendation. He argued that the punishment should be a probation or salary cutback only, but not a removal. I explained to him that in this case the principal confessed and the Council of Minister's circular is very clear. Therefore, the level of punishment has to be as what is stated in the circular.

Most superordinates and committees, then, consult the Thai Criminal Code in awarding a punishment reduction. However, in some cases, the superordinate uses his discretionary power in awarding the punishment reduction. Mahakun (1977:60-61) has cautioned those who use discretionary power.

> The discharging of discretionary power is a critical responsibility of the judge. If the power is discharghed rightfully and consistently, that discharging will help maintain justice and protect the society from hazards. Conversely, if the discharging is based on malice, caprice, and partiality, several hazards could arise. Importantly, such a discharging will undermine the principle of justice.

This comment may also be applied to disciplinary cases. If the superordinate discharges his discretionary power offensively and inconsistently (i.e. based on malice, caprice, or partiality), problems could arise.

The Role of the National Teachers' Council in Assisting the Disciplined Teacher. Currently, the National Teachers' Council pays little attention to assisting disciplined teachers. Teachers have to deal with their problems themselves. In the non-severe case, the teacher who is punished by a superordinate and later resents working with that superordinate normally requests a transfer. In the case where the request is not granted, the teacher may resign from the position or reluctantly perform his duties. The National Teachers' Council has no legal responsibility in helping the disciplined teacher to adjust to the system.

THE DISCIPLINARY LAWS

The CSRA 1975 includes sixteen categories of behaviors which are considered misbehaviors subject to disciplinary action. These sixteen categories are discussed in the following sections.

> Section 66: The civil servant is required to believe truly in the constitutional form of government.

Government officials are required to support activities which are proposed and operated by the government. The government can hardly secure confidence in government and support from citizens if government officials themselves do not believe in the form of government as stated in the constitution. Therefore, believing in the constitutional form of government is a fundamental requirement for all government officials. Further, the inclusion of this provision in the discipline laws makes disciplinary law congruent with Section 24(3) of the CSRA 1975 or Section 23(3) of the TRA 1980 which states that "the civil servant (or teacher) is required to believe truly in the constitutional form of government".

Na-nakon et al. (1982:5) describe behaviors which conform to this provision as follows.

> Behaviors which are considered truly constitutional include those which are expressed behaviorally and orally. The behavioral expression refers to the use of rights and the performing of duties which are included in the constitution (e.g. participating in the general election vote). The oral expression refers to speech, arguments, explanation which back up the existence of the democratic government (e.g. explaining to citizens about advantages of the democratic form over other forms, or persuading those who misunderstood this form and defected to believe in this form).

According to Section 66, teachers are required to perform all constitutional duties which are prescribed for Thai citizens. The failure to perform these duties can lead to disciplinary actions. In addition to performing the duties, the teacher is required to explain to citizens the advantages of the democratic form over other forms and to encourage them to believe in it.

The provision does not say if the violation of this provision is a severe case, therefore, the teacher who violates this provision shall be lightly punished.

Although the violation of Section 66 is considered non-severe, if the violation could be categorized as a misbehavior, the teacher may be punished more severely under another provision of this law. For instance, if the teacher is jailed under the order of the Prime Minister for opposing the smooth operation of the democratic government, that teacher shall be dismissed under Section 81 of this act. A review of teacher disciplinary cases, however, uncovered no cases in which a teacher was punished for this reason at the period under review.

> Section 67: The civil servant is required to perform his duties honestly, trustworthily, and fairly.
>
> He is not supposed to use or let others use his official duties or powers, directly or indirectly, to secure benefits for himself or others.
>
> The offending performance of official duties, ignorance in the performance of official duties, or the performance of duties in a manner designed to secure illegal benefits for himself or others is considered dishonest in the position and is a severely prescribed practice.

Section 67 is examined in specific detail in the following discussion and case study analyses.

Section 67 para 1: "The civil servant is required to perform his official duties honestly, trustworthily, and fairly". The teacher who is to be punished under this provision is the teacher who performs his official duties dishonestly, untrustworthily, or unfairly. Therefore, in order to determine guilt of the accused teacher under this provision, it is necessary that the investigating committee or the superordinate ask these questions: 1) Does the accused teacher have official duties which he is required to perform? 2) Did he perform the duty dishonestly? 3) Did he perform the duty untrustworthily? or 4) Did he perform the duty unfairly?. If the teacher violates any combination of (1) and any other, he is said to violate this provision.

Na-nakon et al. (1982:10-11) advise that in order to know the official duties of the civil servant, one may study from these four sources: 1) laws or regulations, 2) standards of the position, 3) the duties assigned to him by the superordinate, and 4) official duties of others which he voluntarily assumes or shares. For teachers, the *STANDARDS OF POSITION* states that the teacher is required to perform teaching duties and other duties as are assigned to him by the superordinate. This means that the superordinate may assign any official duty which he considers appropriate to the teacher (e.g, to be a registrar, to be a school plant manager, to be a school guard, to be an office staff member, to be a construction inspector, and so forth). The teacher will be responsible for such an additional duty if he is ordered to perform it by the superordinate. The performance of these duties dishonestly, untrustworthily, or unfairly therefore contravenes Section 67 of the Civil Service Regulation Act (1975).

What is an honest performance? Na-nakon et al. (1982:12) explain that the honest performance is "the performance which is directional, plain, and non-deceitful." The disciplinary cases following should broaden our perception on this matter.

> **Mrs.U's case.** *Mrs.U was accused on the grounds that she: 1) illegally collected money from students, 2) neglected to return the remaining money which was initially planned for use on the school exhibition day to the school principal, 3) pawned the school tape recorder which was supposed to be used for teaching purpose, 4) illegally asked for money from villagers by promising them that she would help their children to*

> *get teaching jobs, 5) illegally asked for money from students who failed the final exam by promising them that she would help them to pass the exam, and 6) was excessively in debt. Through the investigation on the ground of dishonesty, the committee found that Mrs.U was appointed to chair the stage activities on the school exhibition day. To organize the show, Mrs.U requested 3,000 baht from the school principal and she spent the money herself without notifying her colleagues who helped her in organizing the show. Long after the exhibition, Mrs.U submitted bills of purchasing to the principal, and it was found that the amount of money appearing on the bill was 455 baht less than the amount paid to her. The school principal reminded Mrs.U a few times asking her to reimburse the remaining amount of money but she ignored doing it. Since Mrs.U was appointed to organize the stage show by the superordinate therefore the organization of the show was also her official duty and so was the request for the money to organize the show. The failure to return the remaining money to the school principal was therefore dishonest to the position. Mrs.U was also guilty under other grounds so that she was put out of service (the Department of General Education Order #3387/2522 dated August 20, 1979).*

With regard to the trustworthy performance, Na-nakon et al. (1982:13) note that "the trustworthy performance is the performance which aims at rightfulness". In other words, the trustworthy performance is the performance which complies with the laws, the regulations, and the office traditions. Which is the untrustworthy performance? The following case should help us understand this provision.

> **Mrs.E's case.** *Mrs.E was accused on the grounds of: 1) receiving educational fees from students but neglecting to record in the school cashbook and 2) refusing to deliver the school cashbook to the newly appointed school finance officer in time. In the investigation, the committee found that Mrs.E was appointed, in addition to teaching duties, to be the school finance officer under the Kuchinarai School Order #17/2520 dated March 16, 1977). During May-June, 1977, which was the beginning of the school year period, Mrs.E received educational fees from students*

> *but neglected to record 5,030 baht which were collected from 37 students. Due to this negligence, these 37 students were notified by the school principal in February, 1978 for owing educational fees. Up on detecting the negligence, the school principal appointed another teacher to act as the school finance officer and ordered Mrs.E to reimburse the missing money and to deliver the school cashbook to the new finance officer. After receiving a few reminders, Mrs.E delivered all documents along with the argument that she just had received educational fees from these 37 students when, in fact, the receipts indicating that these students paid their fees during May- June, 1977. Since the collection of educational fees was Mrs.E's official duty- neglecting to record the receipts in the school cashbook in time was considered an untrustworthy performance. Mrs.E was ordered for a two-step salary demotion (the Department of General Education Order #1848/2523 dated May 1, 1980).*

Regarding the question of "fair" performance, Na-nakon et al. (1982:13) suggest that "the fair performance is the performance which is just and impartial". In other words, the official who performs his duties fairly provides fair and impartial services to the clients. Specifically, the teacher who is fair and impartial treats his students fairly and impartially. He pays equal attention to students. He evaluates students' works by quality of the work rather than by favoritism and so forth. However, a review of teacher disciplinary cases detected no teachers punished for this reason.

The terms "honest", "trustworthy", and "fair" have a very close meaning. The offence which is considered as dishonest may also be considered as untrustworthy and unfair. Miss AB's case should help us to understand the relationships among these three terms with respect to Thai laws.

> *Miss.AB was initially accused on the grounds of incompetence for making the school cooperative lose the sum of 36,144.50 baht. Through the investigation, the committee found that Miss.AB was appointed to be the manager of the school cooperative which was founded legally under the Cooperative Act. Although there were some other teachers named to be members of the administrative committee, Miss.AB never called for a meeting. She managed all activities of the cooperative herself. More seriously, Miss.AB did not update the cooperative cashbook nor did she maintain spending and purchasing records. Thus losing the cooperative the sum of 36,144.50 baht. Since the school cooperative was legally established, acting as the manager of the cooperative was also Miss.AB's official duty. The failure to consult with other administrative members of the cooperative, to delegate accounting duties to the accountant who was named to the position by the principal, to update the cooperative cashbook, and to maintain records of spending and purchasing was considered a dishonest, untrustworthy, and unfair performance. Miss.AB was ordered to take a one-step salary demotion (the Ministry of Education Order #SP200/2523 dated April 29, 1980). In addition to the disciplinary punishment, Miss.AB was ordered by the court to reimburse the missing money.*

Section 67 para 2. "Do not use or let others use his official duties and powers, directly or indirectly, to secure benefits for himself or others". This provision prohibits the teacher from using his duties and powers to secure illegal benefits for himself or others. Therefore, in order to determine whether or not the accused teacher is to be punished under this provision, the superordinate needs to find out if the accused teacher has official duties and powers on such matters. If so, he needs then to find out if the accused teacher has used or let others use his official duties and powers to secure benefits (monetary or services), for himself or other. If these two conditions are met, the accused official will be guilty under this provision. Mr.AP's case may be instructive.

> *Mr.AP was initially accused on the grounds of immorality. Through the investigation, the committee found that Mr.AP was appointed to teach a physical education course. Prior to the accusation, Mr.AP supervised a physical test requiring that students demonstrate their table tennis playing ability. During the test, a female student did poorly, and was crying after knowing the result. Mr.AP approached her and asked her about the cause of crying, and at the same time he used his hand to wipe away her tear. The student stepped backward but was held on the hand by Mr.AP. He told her to do more practice and come back to take another test that same day. In the same investigation, it was also found that Mr.AP had used a wooden stick to prod at the female student's breast. He had taken a female student to the movie theater and persuaded another female student to visit his place. In the summary, the committee says:*
>
> > *The using of a hand to wipe away a female student's tear during the test hour is considered unacceptable. It is a performance which is intended to secure partial benefits by abusing his official duty.*
>
> *Mr.AP received a one-step salary demotion and was transferred to teach at a non-girl school (the Department of General Education Order #1485/2522 dated May 31, 1979).*

> Section 67 para 3. "The offending performance of official duties, ignorance in the performance of official duties, or the performance of official duties in a manner designed to secure illegal benefits for himself or others is considered a dishonesty in the position and is a severely prescribed practice".

The provision requires that the teacher who violates this provision be punished severely. Na-nakon et al. (1982:16) explain that the offence under Section 67 para 3 may be determined under these three conditions: 1) having official duties to perform, 2) performing the duties offensively or ignorantly, and 3) intending to secure illegal benefits for oneself or others.

To discover the official duties of a particular teacher, one may consult the *STANDARDS OF POSITION* devised by the Teachers' Commission and also peruse the superordinate's directives to that teacher. With respect to offending performance of official duty or to ignorance in the performance of official duty, the reference must be an action which has already taken place. The intention to perform the duty offensively or to ignore to perform it rightfully will not be considered an offence.

Which is considered an offence? Na-nakon et al. (1982:17) explain that the term 'offensive performance' refers to "any performance which does not comply with the law, the regulation, the superordinate's order, the Council of Ministers circular, the office tradition, or just practice". The teacher who performs official duties offensively or neglects to perform them rightfully is considered an offender. This offence is viewed as dishonest if it leads to illegal benefits. Mr.AH's case should help us understand this provision.

> *Mr.AH was initially accused on the grounds of disclosing the prepared final exam questions. In the investigation, the committee found that Mr.AH was ordered by the school principal to duplicate the prepared final exam questions for the 1978 academic year. During the duplication of Physics and Chemistry*

> *questions, Mr.AH kept a copy of questions of each subject with him, and then took them home. He later copied answers to all questions and gave them to a female student who had close connection with him. The female student got full marks on the two subjects. This created suspicion on the teacher who marked the exam. Since Mr.AH was ordered to duplicate the prepared final exam questions, the duplication was Mr.AH's official duty. The disclosing of final exam questions (which were to be kept as secret documents) to the student allowed the student to score higher marks; thus it was an offence under Section 67 para 3. Mr.AH was terminated from school (the Department of General Education Order #2118/2522 dated November 14, 1979).*

For this same case, if Mr.AH had not been ordered to be a duplicating official but had only entered into the duplicating room and took the prepared questions away, gave them to the student, and allowed the student to get higher marks, Mr.AH would not be guilty under this provision. However, he would be guilty under Section 70- -disclosing official secret information.

It should be noted that the action which is considered an offence under this provision must arise through the performance of official duty. If it is only a dishonest, untrustworthy, or unfair practice, or the use of official duties or powers to secure benefits, but is unintentional, the teacher will receive a less severe punishment. But, if the securing of illegal benefits is intentional, the offender will have to receive at least a termination.

> Section 68: The civil servant is required to support the government policies. He is required to perform his official duties, under the law, the regulation, and the government circular industriously and conscientiously, and with the intention to protect the government.

> Negligence in performing official duties or the performing of office duties intentionally against the law, the regulation, or the circular that causes severe damages to the government institution is a severely prescribed practice.

The provision is divided into two paragraphs. The first one explains behaviors which are considered minor disciplinary violations. The second one explains behaviors which are considered major disciplinary violations. Details of the two paragraphs are discussed below.

> Section 68 para 1. "The civil servant is required to support the government policies. He is required to perform his office duties, under the law, the regulation, and the government circular industriously and conscientiously, and with the intention to protect the government".

According to this provision, one can see that there are two major things that the government expects from teachers: 1) support for the government policies and 2) performing office duties industriously and conscientiously. In supporting government policies, the teacher may implement the government policies or participate in their implementation. Impeding or hindering policy implementation is considered an offence under this provision. However, since the implementation of government policies is usually initiated by senior levels of government but rarely by most teachers who are classified as subordinates, the participant role of teachers is usually determined by the superordinate. Avoiding the performance of the determined role may be considered an insubordination which is possibly a major disciplinary matter. A review of teacher disciplinary cases indicates that no Thai teacher has been punished under this provision.

With regard to the industrious and conscientious performing of official duties, this provision states that the teacher is required to perform official duties under the law, the regulation, and the government circular industriously and conscientiously. It must be remembered that the industrious and conscientious performance must be in compliance with the law. Being industrious and conscientious but violating the law is considered an offence. For most teachers, the major duty is teaching. They are required to teach industriously. They are required to consult the Ministry of Education's curricula. They are required to prepare lesson plans and produce and use instructional media which lead to better and easier understanding. They are required to evaluate student performance by means of the Ministry of Education's standard. They are required to teach at the scheduled hour. They should not request personal-business leaves which could cause learning disadvantages to their students. Finally, they are required to perform their additional duties assigned by the principal industriously and conscientiously. The following disciplinary cases should help us understand this provision.

> **Mrs. O's case.** *Mrs. O was accused on the grounds of: 1) neglecting to perform official duties,*

2) being often late at work, 3) often requesting leaves, 4) neglecting to perform guarding duties, 5) being insubordinate, and 6) speaking inappropriate language. In the investigation, the committee found that Mrs. O often requested permission from the principal to participate in the Community Red-Cross Association's activities and other community activities which were supported by her husband who was the sheriff. In addition, Mrs. O often arrived to school late. After arriving, she would have her breakfast which was brought from home and then take a nap instead of preparing her lesson plans. The principal once appointed her to chair a sport activity but instead she escorted her husband's subordinate who received a transfer to another district leaving her assistant who did not know much about sports to run the activity on the sport day. Further, Mrs. O, who was not assigned to teach any particular subject nor to be responsible for any particular duties due to her poor health, was occasionally ordered to teach a few classes but most of the time she ignored the order by citing unacceptable reasons. In 1977, Mrs. O was granted 63 days for sick leaves, 3 days for personal-business leave, and 38 permissions to go out of the school ground during the office hours. She signed her name under the late-indication line 8 times. Since Mrs. O requested too many leaves and neglected preparing herself for class, she was ordered for a four-month 10 percent salary cutback under the grounds of lack of industrious performance (the Department of General Education Order #4507/2522 dated October 11, 1979).

Mrs. ACC's case. Mrs. ACC was accused on the grounds of: 1) being many times absent prom the class, 2) assigning grade III students to learn individually while she herself left the school grounds to do her own work during the school hours, 3) neglecting to do her lesson plans as ordered to do so by the principal, 4) speaking inappropriate language before her colleagues. The investigating committee found that Mrs. ACC often came to teach far behind the scheduled time and left the classroom much earlier than the scheduled time. In instruction, Mrs. ACC preferred the reading and jotting method to any other method. She read the text to students and the students jotted down what she read to them. Many times Mrs. ACC asked her students to read to the class for her. The vice principal academic reminded her several times to submit lesson plans to her (the vice principal) but Mrs. ACC neglected to do so. Up until the end of the academic year, Mrs. ACC had not submitted her lesson plans to the vice *principal which in fact she should have done prior to the commencment of the academic year. As a teacher, Mrs. ACC should have practiced her profession industriously. But, instead, she performed her official duties unconscientiously. She was therefore sentenced to a four-month 10 percent salary cutback for indolence (the Province of Khon Kaen's order #335/2523 dated February 14, 1980).*

Mrs. W's case. *Mrs. W was accused on the grounds of: 1) rearing up her own son at school during the school hours and 2) speaking inappropriate language to students who bothered her son. The committee investigated the case and found that Mrs. W brought her three-year old son to school with her almost every school day. During the hour, her son strayed in and out of the class. Before and after the hour, Mrs. W did not prepare instructional materials nor correct students' works. A few times she became angry when students bothered her son. The school principal cautioned her on this matter but she did not improve her performance. Mrs. W therefore received a two-month 10 percent salary cutback (the Department of General Education Order #1467/1980 dated April 4, 1980).*

Mr. AN's case. *Mr. AN was accused on the ground of causing the school to lose its educational fees of 136,727.10 baht. The committee investigated the case and found that Mr. AN had official duties to collect educational fees from students during the year 1972-1977. During that period, Mr. AN should have collected 644,900.00 baht from his students but collected only 465,260.00 baht- 179,640.00 baht less than the expected number. Mr. AN spent 42,912.90 baht illegally to purchase school equipment and materials. Therefore, the actual missing amount was 136,727.10 baht. Further, in keeping educational fees, Mr. AN kept and spent them himself without requesting advices from other members of the money-keeping committee. Mr. AN received a two-step salary demotion and was ordered to reimburse the missing fees[14] (the Ministry of Education Order #SP407/2522 dated October 4, 1979).*

Section 68 para 2. "Negligence in performing official duties or the performing of official duties intentionally against the law, the regulation, or the circular resulting in damages to the government institution is a major disciplinary matter". This provision explains two components of behaviors which are considered major misbehaviors: 1) the negligence that results in severe damages to the government organization and 2) the performing of official duties intentionally against the law, the regulation, and the circular resulting in severe damages to the government organization. Details of these two components are discussed below.

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[14] The Teachers' Commission reminded that the level of punishment was somewhat slight.

Regarding the negligent performance, the disciplinary law does not state clearly the definition of negligence. The only definition of negligence found in the Thai Criminal Code states (Section 59):

> The negligent performance is the offence which is done unintentionally. It is the offence that occurs by carelessness where in fact the offender under such circumstances has capability to prevent the offence but neglects to use his capability

To broaden the reader's perception on this matter, a consideration of two negligence cases, which were ruled on by the Thai supreme court, may be useful.

The Supreme Court Ruling #51/2494. The prosecutor vs Fak Bousri. In this case Fak was driving a tram along the road and saw another car parking on the tram's route about 20 metres ahead. Instead of stopping his tram, Fak continued driving, finally hiting that car and causing damages to the car. The supreme court ruled that Fak was guilty on the grounds of negligence.

The Supreme Court Ruling #122/2496: The Prosecutor vs Lek Noijoi. In this case Lek was driving a tram along the road and saw a bus dropping passengers at the bus stop. Instead of reducing the speed, Lek maintained his regular speed, passing close by the descending passenger and injuring a passenger. The supreme court ruled that Lek was guilty on the grounds of negligence.

Based on these rulings, one can see that negligent performance result from neglecting to perform the duty when under the circumstances one is able to perform it (the Supreme Court Ruling #51/2494) or by continuing to perform the official duty when it should not be continued under the circumstances (the Supreme Court Ruling #122/2496). In disciplinary cases, the law itself does not define the meaning of negligent performance. However, the Secretary-General of the Civil Service Commission advises that (Na-nakon et al., 1982:27):

> Negligence is an action which is done carelessly and unwittingly. Or, it is an action which is done through inattentiveness or forgetfulness where under such circumstances that person should be able to do it carefully and conscientiously.

The negligence which is considered to be a major disciplinary matter is the negligence which results in severe damages to the government organization. If it is perceived by the superordinate that such negligence creates only minor damages to the organization, the offender will receive only a minor punishment. Up to present, no one has been punished for this reason. However, there are two disciplinary cases that are applicable to teachers.

> *(1)The Director of a museum was accused on the grounds of negligence. In the investigation, the committee found that the Director relied on and gave keys to antique cabinets to a subordinate. Later on, it was found that 458 antiques valued at 3,920,306 baht were stolen. The reliance on such a subordinate was a negligent performance of the superordinate. He was therefore dismissed from the office (cited in Na-nakon et al., 1982:461).*

> *(2)The health care official was accused on the grounds of negligence. On a particular day, this official used a government motorcycle to distribute medicine to patients in the rural area. Unluckily, due to heavy rain, the official could not go to the designated village on the motorcycle. He therefore entrusted the motorcycle to a villager and walked to the village. After finishing distributing medicine to patients, it was found that the motorcycle was stolen. The official received a minor punishment (cited in Na-nakon et al., 1982:29).*

With regard to the performing which is intentionally against the law, the regulation, or the circular, the offending teacher will receive a severe punishment if the violation is done intentionally and brings severe damages to the government institution. The wrongdoing teacher will not be guilty under this provision if the offence is committed unintentionally. Up to present, no one has been punished on these grounds. However, there are two disciplinary cases which could help us better understand this provision.

> *(1)The forestry official reported to the sheriff recommending that the land located close to the*

> *national park be allocated to villagers for cultivating purposes. By regulation he was required to consult the Department of Foresty prior to making such a recommendation. The Department learned about this allocation at a time when a few acres of the national park were already allocated. The forest official was terminated on the grounds of performing official duty intentionally against the law.*
>
> *(2)The prison guard took a prisoner to work out of the jail. He let the prisoner borrow his bicycle to ride to visit his home(the prisoner's home). The prisoner ran away. The prison guard was put out of service (cited in Na-nakon etal, 1982:462).*
>
> Section 69: The civil servant is required to take it as an extra responsibility to pay attention to any movement that could jeopadize national security and is required by all means to help protect the security of the nation.

This provision requires that all civil servants pay attention to movements organized by a person or a group of persons that might endanger security of the nation and that they use their capability to protect their national security. For instance, if the teacher discovers that a group of leftist guerillas is building up its power in his area, that teacher must impede or prevent the building up--perhaps by reporting to patrolmen or military officers. The refusal to prevent or suppress this movement is a disciplinary matter. The law does not state if the violation of this provision is a major disciplinary matter. Thus the person who violates this provision may receive a minor punishment (i.e. probation, salary cutback, or salary demotion). A review of teacher disciplinary cases reveals that no one has been punished under this provision.

> Section 70: The civil servant must not disclose official secret information. The disclosure of official secret information that brings severe damages to the government institution is a major disciplinary matter.

The provision designates two possible levels of punishment for the violator: non-severe and severe punishment. The degree of damage caused by the disclosure determines the level of punishment. In order to better understand this provision, it is necessary that the reader understand the Thai definition of "secret information".

The Regulation Concerning the Retention of National Security 1974 divides secret information into four categories:

1. Top secret. Top secret information is the most crucial information. It may be concerned with people, locations, material or conceptual things. The disclosure of top secret information, partially or totally, to the unauthorized person may bring the worst disaster to the security, stability, or order of the nation and its allied members.
2. Secret. Secret information is very crucial information. It may be concerned with people, locations, material or conceptual things. The disclosure of secret information, partially or totally, to the unauthorized person may bring disaster to the security, stability, or order of the nation and its allied mambers.

3. Confidential. Confidential information is crucial information. It may be concerned with people, locations, material or conceptual things. the disclosure of confidential information, partially or totally, to the unauthorized person may bring disaster to government organizations or may lower recognition of the nation or its allied members.

4. Restricted. Restricted information is information which should not be disclosed to the unauthorized person.

Since the determination of the level of punishment relies on the degree of disaster that the disclosure brings to the government organization rather than on the level of the secret, the disclosure of restricted information can lead to a severe punishment if such disclosure causes wide-spread disaster to government organizations. However, it is more likely that the disclosure of top secret or secret causes more disasters to the government and thus leads to a more severe punishment. Further, it is interesting to notice that this provision requires all teachers retain secret information no matter how he attain such information. Therefore the disclosure of secret information, regardless of means of acquisition, is considered an offence under this provision. In addition, if he has the official duty to retain it but discloses it for his own or others' illegal benefits, he shall be disciplined on the grounds of dishonesty in the position. The following disciplinary case should help us understand this provision.

> **Miss J's case.** *Miss J was accused on the ground of disclosing the prepared final exam questions. In the investigation, the committee found that Miss J was a Thai language teacher. She offered, on the weekend, free tutoring on Thai language and Social Studies to three students who were her own advisees and did poorly on many subjects. In each tutoring, Miss J prepared sets of exercises which were adapted partially from the previous and the prepared final exam questions. Before the committee, Miss J admitted that she obtained the prepared final exam questions at the time when she handed in her Thai language questions to the duplicating official. She therefore included the obtained questions in her tutoring exercises and gave them to the three students. The three brought the exercises and keys to the exercises into the writing exam room and were detected by the final exam supervisor during the exam-writing period. Since the prepared final exam questions are secret information, the disclosure of this information by Miss J, who was not a secret information retention official, was considered a disciplinary matter. However, the disclosure only brought minor infamies to the school reputation; therefore Miss J received only a one-step salary demotion (the Ministry of Education Order #SP531/2523 dated November 7, 1980).*

A review of teacher disciplinary cases reveals that no one has been punished severely on these grounds.

> Section 71: The civil servant is required to submit to official orders issued under the law and regulations of the superordinate. He is required not to resist or avoid following the legal order.
>
> The resistance to or the avoidance of official orders issued under the law or regulations of the superordinate that leads to disaster is considered a severe disciplinary matter.

The provision dictates two possible levels of punishment for the violator: non-severe and severe punishment. The degree of severity of the disaster caused by the violation determines the level of punishment. Na-nakon _et al._ (1982:35-39) explain that the offending component under this provision is five-fold: 1) it is legally the superordinate's order, 2) the superordinate is the legal superordinate, 3) the order is issued for official purposes, 4) the order is consistent with the laws and regulations, and 5) the accused official intentionally resists or avoids following the order. Details of each component follow.

It is legally the superordinate's order. In issuing an order, the superordinate may issue it in writing or orally. If the order is legal, the subordinate is required to comply with it. He cannot resist or avoid following it. In addition, it must be remembered that the superordinate is responsible for damages caused by the too strict compliance of the subordinate.

The superordinate is the legal superordinate. In order to determine the legality of the superordinate, the teacher may study the following laws: 1) Promulgation of the Revolutionary Party #218, 2) Section 33 of the TRA 1980, and 3) the law concerning the establishment of the institution. The Promulgation of the Revolutionary Party #218 regulates that the Educational Minister is the highest superordinate in the Ministry of Education. He is the legal superordinate of all teachers. The Permanent Secretary is the legal superordinate next to the Minister. Within the Department, the Director-General is the highest superordinate while the Deputy Director-General is next to the Director-General. In some Departments, the Director-General may delegate his supervisory power to the Governor (Clause 40 and 42). In such a case, the Governor becomes the legal superordinate of teachers.

In addition, Section 33 of the TRA 1980 states that "under the provision of the law concerning the administration of government organizations (the Promulgation of the Revolutionary Party #218), which position is to supervise what position has to be determined in writing by the superordinate who is authorized under the provision of Section 42". For instance Section 42 of this act states that the Permanent Secretary can appoint the qualified teacher to be a Class 10 teacher or a professor. The Director-General may appoint the qualified teacher to be a Class 9 teacher, associate professor, or any other lower position. However, if the law concerning the establishment of the institution differs, that law is supreme. For example, the Teachers College Act 1975 states that "Department Head is the superordinate of teachers in the Department".

The order is issued for official purposes. Na-nakon *et al.* (1982:36-37) explain the term 'issuing for official purpose' below:

> The term 'issuing for official purposes' has two meanings: 1) the issuer has official duties on that matter and issues the order to direct the subordinate to perform these duties or 2) there are official duties to be performed by the superordinate himself but he could not do it himself and therefore he orders his subordinate to do it for him.

According to this explanation, the superordinate may order his subordinates to perform any duty which is classified as an official duty. The disciplinary case cited in Na-nakon et al. (1982:37) should help explain this provision.

> *Mr.A's subordinate embezzled government money. The Director-General of Mr.A dismissed Mr.A's subordinate and ordered Mr.A to reimburse the embezzled money since the Department did not know how to contact Mr.A's subordinate. Mr.A argued that he should not be responsible for the reimbursement since he did not participate in the embezzlement. Or, if he is to be responsible for the reimbursement, some other senior should also be responsible for it. In addition, Mr.A also knows that the civil claim on this matter has already expired therefore Mr.A refused to comply with the Director-General's order. The Director-General dismissed Mr.A on the grounds of resisting the superordinate's order. Mr.A appealed to the Civil Service Commission. The commission ruled that "the purpose of this provision is intended only to direct the subordinate to comply to the order issued for official purposes in the performance of official duties. In this case, the reimbursement of the embezzled money is a civil matter and it has to be processed in the court of justice. The Director-General has no legal power to order Mr.A to reimburse the embezzled money since the reimbursement is not the performance of an official duty.*

The order is issued under the law or regulation. The legal order is the order which is issued by the superordinate who has legal power, under the law or regulation, to issue it. The order issued beyond the superordinate's legal power is considered an illegal order, and the subordinate is not required to comply to it. Mr.A's case, cited above, is also illustrative of this facet of the offending component.

The accused official intentionally resists or avoids following the order. In determining the guilt of the teacher under this provision, it is necessary that the superordinate determine if the accused teacher intended to resist the order. If the accused teacher did not intend to resist it, he should not be considered guilty. For instance, the insubordination which is caused by immediate sickness or unanticipated confinement cannot be considered an offence under this provision. The following cases should help us understand this provision.

> **Mr.B's Case.** *Mr. B was accused on the grounds of insubordination. In the investigation, the committee found that Mr. B was a physical education teacher. On August 22, 1978, Mr. B requested a leave to escort his colleague to another province. The principal denied the request. He explained that the request was unreasonable and that the school did not have sufficient staff during this particular period since two of the physical education staff were ordered to perform duties at the Country Regional Games. Instead, the principal ordered Mr. B to devote extra times to physical education classes during that hectic period. Mr. B resisted the principal's order. He escorted his friend to another province. The committee perceived that Mr. B intentionally resisted the principal's order. Mr. B therefore received a three-month 10 percent salary cutback[15] (the province of Chumpon's Order #1103/2521 dated December 11, 1978).*

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[15] The Department requested the Governor to lower the level of punishment but was unsuccessful.

> **Mr.C's Case.** *Mr. C was accused on the grounds of insubordination for not participating in saluting the national flag at the saluting time as he was ordered to do so by the principal. The investigating committee found that Mr. C arrived the school at 8:10 a.m., before the saluting time. Mr. C had not had breakfast; therefore he went out for breakfast and arrived back at school at 8:30 a.m. thus missing the flag ceremony. Mr. C received a probation for this violation (the Sriwichaiwidhaya School Order #2/2523 dated January 9, 1980).*

> Section 72: The civil servant is required to perform official duties through his immediate supervisor (proper channels) unless he is ordered occasionally not to do so by a senior superordinate.

This provision contains three potential offending components: 1) the subordinate must be performing an official duty, 2) the performance ignores proper channels, and 3) the superordinate is the legal superordinate.

The subordinate must be performing an official duty. The activity that can be considered an offence under this provision must involve the performance of official duties. If the law or an order does not require him to perform such a duty, that teacher will not be guilty under this provision. For instance:

> *...a group of Nong-rue-Widhaya school teachers cooperatively wrote an article defaming their principal and published it in a Bangkok newspaper (Siamrat:June 9, 1979) without passing it through the school principal. The writing of the article was not an official duty and therefore these teachers were not guilty under this provision. However, they were guilty under Section 76 for being the cause of disunity. The teachers who were involved in this case received a four-month 10 percent salary cutback (The Province of Khon Kaen's Order #244/2523 dated February 4, 1980).*

The performance ignores proper channels. In order to determine the hierarchical structure of each organization, one may study the law concerning the administration of government organizations. The subordinate is required to submit or pass all official requests, reports, or documents through the immediate superordinate. That superordinate is required to pass all official requests or reports to his immediate superordinate before submitting it to the authorized superordinate. In the past, no one has been punished on these grounds.

The superordinate is the legal superordinate The legality of the superordinate has been discussed earlier (page 211) and therefore is excluded from this discussion.

Section 72 does not specify if the violation of this provision is a major disciplinary matter. Therefore the violator may receive only a minor punishment.

> Section 73: The civil servant is required not to present false information to the superordinate. The presentation of information and simultaneously concealing important information is considered a false presentation.
>
> The presentation to the superordinate of false information that leads to severe damage to government organizations is considered a severe disciplinary matter.

The provision contains three potential offending components: 1) there is an information presentation, 2) the information is false or the important information is concealed, 3) it is a presentation to one's superordinate. Details of each component are discussed below.

There is an information presentation. Na-nakon et al. (1982:49) explain that:

> The information presentation refers to the revealing of information or the presentation of information for consideration to the superordinate, the presentation of facts leading to the awarding of permission or approval, or the presentation of a report to the superordinate.

According to this explanation, the presentation of information may be done in writing or orally. For example, the inclusion of false information in a sick leave request form is considered a false presentation.

The information is false or important information is concealed. The false presentation may be caused by the false information itself or by the failure to disclose relevant information by the presenter. For instance, the presenter may conceal information which is detrimental to his request or report.

It is the presentation to the superordinate. Under this provision a presentation has to be a presentation to the legal superordinate. The presentation of false information to someone else who is not the legal superordinate (e.g, a journalist, an investigating committee, etc.) is not an offence under this provision. The following disciplinary case should broaden our perception on this matter.

> **Miss AX's case.** *Miss AX was accused on the grounds of failure to comply with the leave request procedure. The investigating committee found that Miss*

AX had made a few sick-leave requests but had not submitted the physician's statement to support the requests. The superordinate reminded Miss AX to submit the statement but she failed to do it. This time, the committee again asked Miss AX to present the physician's statement to the committee to prove that she was really sick. Miss AX submitted the statement signed by the physician who was working at Makkasan Hospital in Bangkok. The statement created some suspicion since Miss AX was teaching at a school far away from Bangkok. The committee asked the hospital to confirm the statement but it was found that there was no such a physician working at the hospital. The superordinate ruled that Miss AX was not guilty on the grounds of false presentation but she was absent from school; therefore she was guilty under another provision.

Mr. M's case. *In this case, the committee found that during August 23-25, 1978, Mr. M requested a three-day sick leave when in fact during these days he escorted his friend to another province. Mr. M received a three-month 10 percent salary cutback*[16] *(the Province of Chumpon's Order #1103/2521 dated December 11, 1978).*

Mr. X's case. *In this case, the committee found that a physical education staff member wanted to lead his grade XI students to Khao-Yai Mountain to test their physical strength. He requested permission from Mr. X, the Director of the school, to take the students to Khao-Yai by bus. Mr. X found that the request was beyond his power. He then conveyed the request along with the list of students to the Governor. The Governor granted permission. Prior to the departure of students, Mr. X came to see them off. Mr. X noticed that some students' names were not on the list but failed to stop them and did not report to the Governor. On the trip, the leading bus crashed into a heavy truck and the two following buses crashed into the preceding one. The accident killed 57 students and 5 teachers including the teacher who organized the activity. Since Mr. X knew that some students who participated in the activity were not listed on the departure list but was reluctant to stop them or report the incident to the Governor, he was assigned a four-month 10 percent salary cutback (the*

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[16] The Department requested the Governor to alter his order but was unsuccessful.

Province of Srisaket's Order #2390/2522 September 25, 1979).

Mr.AS's case. *Mr. AS was transferred from Nakonsrithammarat to Pattani in 1954. In that year, the school did not have sufficient government housing. Mr. AS therefore found a rental house in town and claimed for housing allowance since that date. In July 1976, Mr. AS, his children, and his second wife moved to stay in government housing located on the school grounds. But his first wife stayed in the original rental house and Mr. AS proceeded to claim for a housing allowance until the end of January, 1978 when he was stopped by the Director of the school. Since Mr. AS had already moved to stay in the government housing but continued to use the forged receipts of the original rental house and the forged district family registration to claim for the housing allowance, he was given a four-month 10 percent salary cutback[17] (the Ministry of Education Order #3617/2522 dated December 21, 1979).*

Mr.Y's case. *Mr. Y was accused on the grounds of using forged documents to claim a moving allowance. In the investigation, the committtee found that Mr. Y was transferred from Chiangmai to Nakonpanom. Soon after receiving the order, Mr. Y and his family moved to Nakonpanom by bus. He realized that he was entitled to a moving allowance. Therefore, he bought the forged receipts for the move from a store in Udontanee and used this receipt to claim for the allowance. The government paid him 9,250 baht as claimed when in fact he paid only 450 baht for the moving of the whole family. Mr. Y reimbursed the claimed allowance during the investigation. However, since Mr. Y used the forged document to claim for the allowance, he therefore was guilty on the grounds of false presentation. On this specific matter, the Council of Ministers had circulated a circular saying that the use of forged document to claim for any kind of government allowance is fraudulent. The government official who commits the fraud must be at least terminated (the Council of Ministers Circular #NW125/2503 dated October 5, 1960). After reviewing the case, the Teachers' Commission recommended a termination. Mr. Y was*

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[17] The Teachers' Commission reminded that the punishment was somewhat slight. The case could be considered a fraud.

finally ternimated[18] *(The Department of General Education Order #1665/2524 dated August 25, 1981).*

Section 74: The civil servant is required to comply with the office regulations and traditions.

This provision specifies two conditions of improper actions: 1) there is an official regulation or tradition on the matter and 2) there is a violation of the regulation or tradition. Details of each condition are discussed below.

Office regulation or tradition. The office regulation or tradition mentioned in this provision refers to the regulation which directs the general behavior of the person who serves in the government organization. These regulations or tradition may be: the Regulation Concerning Government Official Uniform, the Regulation Concerning Leaves of Government Officials, the Regulation Concerning the Administration of Student Activities, the Regulation Concerning the Punishment of Students, the tradition concerning the presentation of requests or reports to the superordinate, the tradition concerning the expression of respect to the high ranking official, etc. The tradition referred to in this provision does not include traditions which are not related to the performing of office duties, e.g., the tradition concerning the cerebration of the superordinate's birthday, the tradition concerning the celebration of the superordinate's promotion or transfer, etc. The violation of these latter traditions is not considered an offence.

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[18] Mr. Y initially received a salary cutback. The termination was dictated by the Prime Minister after being recommended by the Teachers' Commission.

There is a violation of regulation or tradition. The teacher shall be guilty if he violates the school regulation or tradition. For instance, the Regulation Concerning Government Official Uniform 1978 stipulates the form of trousers, shirts, hair style, belt, shoes, etc, that must be used or worn by teachers. The teacher who does not comply with this regulation will be guilty. The following cases should broaden our perception on this matter.

> **Mr.T's case.** *In this case, the committee found that Mr. T wore long hair. The school principal reminded him to shorten his hair. Mr. T shortened it but it was still longer than the regulation required. The school principal gave him a second reminder. This time, Mr. T made his hair shorter, complying with the regulation. But instead of only shortening his hair, he made a poster saying - "this is my own hair, do not interfere(in a rather impolite term)" and placed the poster on the school advertising board. Mr. T was finally probated for violating the regulation and speaking inappropriate language (The Ministry of Education Order #149/2523 dated March 27, 1980).*

> **Mr.AJ's case.** *In this case, the committee found that Mr. AJ was persuaded by his students to lead them to Chiangmai. Mr. AJ did not have permission to lead this group of students to Chiangmai. He came to register for work on the preceding night then took the students to Chiangmai in the following morning without notifying the principal. With regard to this matter, Clause 10 of the Minsitry of Education Regulation Concerning the Office Hours of Educational Institutions 1972 says that "every official is required to come to register for work 15 minutes before office hours and come to register to leave the office 15 minutes after the office hours". Mr. AJ was issued a probation (the*

Lampangkalayanee School Order #32/2522 dated July 20, 1979).

Since this provision does not specify that the violation of this provision is a major disciplinary matter, therefore the violator receives only a minor punishment.

> Section 75: The civil servant is required to devote his time to office work. He is required not to be absent from work or fail to perform his official duties.
>
> The absence from work without acceptable reasons that causes severe damages to the government organization or the absence from work that is longer than fifteen days and that is without acceptable reasons is a severe disciplinary matter.

This provision contains two conditions. One who violates the first condition shall receive a minor punishment. But one who violates the second condition shall receive a severe punishment. Details of each condition are discussed below:

Section 75 para 1: "The civil servant is required to devote his time to office work. He must not be absent from work or fail to perform his official duties". This provision contains three types of behavior which are considered offences: 1) failure to devote one's time to office work, 2) absence from office duties, or 3) neglecting to perform office duties.

Failure to devote one's time to office work. Na-nakon et al. (1982:56) explain that "the devotion of time to office work means the devotion of all one's time to office work as it is required by the superordinate. Regardless of time and hour, the civil servant is required to make himself available when requested by the superordinate to perform office duties". The teacher shall not resist the superordinate's order requesting him to perform official work even it is outside office hours. Mr. G's case should help us better understand this provision.

> *Mr. G normally came to school early. On this instance, he arrived school at about 8:30 a.m.. Instead of teaching, Mr. G realized that he was already late for the class. He left the school and went to see the physician for his annual examination. The class was left uncontrolled and students in the class made a noise, interrupting the near-by classes. On the following day, Mr. G submitted a sick-leave request for this absence. The committee summarized that "since Mr. G had already arrived at school and was capable of performing his duties but neglected to do so, he should receive a probation". The superordinate approved the recommendation (the Watbenchamabopit School Order #1/2523 dated January 24, 1980).*

Absence from office's duties. Na-nakon et al. (1982:57) explain that "the term 'absence from office duties' means not being available at the office during the office hours and without any notification". The following cases should better explain this provision.

> **Mr. AY's case.** *Mr. AY was accused on the grounds of being absent from teaching duties. In the investigation, the committee found that in the afternoon of January 21, 1981, Wutikai went out for lunch in downtown Korat. After lunch, Mr. AY drove back to school but unluckily his car broke down. He spent a few hours fixing his car so that he missed his two afternoon classes which were scheduled for the 5th and the 7th periods. Mr. AY did not contact the school during that time. He had already received two written warnings for being absent from the class. This*

time he received a probation[19] *(the Ratchasemawithayalai School Order #13/2524 dated February 26, 1981).*

Mr. AD's case. *Mr. AD was absent from work for 12 days without prior notification. In the investigation, the committee found that Mr. AD was jilted by his girlfriend. The termination deeply upset him. He began to drink day and night for two days and then caught the bus to visit his ex-girlfriend who was teaching 200-kilometre away. Upon arriving in that province, Mr. AD continued drinking day and night for another two days and finally took 20 pills of headache-medicine. The pills made Mr. AD sleep unconsciously for about 24 hours. When he woke up, he met his ex-girlfriend. The two reconciled and decided to marry. Mr. AD took his girlfriend to visit his parents in the southern province, then came back to fill out the sick-leave request form. Since Mr. AD had teaching duties but ignored them for 12 days, he received a four-month 10 percent salary cutback (the Department of General Education Order #3259/2523 dated July 3, 1980).*

Neglecting to perform office duties. Na-nakon et al. (1982:57) define the term 'neglecting to perform office duties' as "neglecting means that the person is available at the office but does not perform his duties attentively". For instance, Mr.A. is said to be an inattentive official if he only comes to register for work and then spends his time frivolously and leaves work to accumulate. A review of disciplinary cases reveals that no one has been punished on these grounds during the period under review.

It must be remembered that the teacher will be guilty on these grounds only when he has official duties to perform. He will not be guilty under this provision if he is not assigned to perform any duty by the superordinate. For instance, Mr.A. has personal conflicts with the superordinate and therefore he was not assigned official duties. For examples, Mr.A. comes only to register for work, and then spends his time frivolously. Even if he is accused, Mr.A. cannot be said to be a guilty official.

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[19] The Teachers' Commission reminded that the level of punishment is somewhat slight. After the first warning, the superordinate should issue at least a salary cutback

Further, the Civil Service Commission ruled that the teacher who is granted a study leave and fails to attend classes is not guilty under this provision. He will, however, be guilty under other provisions. But the one who is granted a study leave to study abroad and does not come back to work within the specified time shall be considered an absentee (the Civil Service Commission Circular #SR 0401/W50 dated May 22, 1967). If the absence is longer than 15 days, the teacher shall be guilty under the provisions of Section 75.

Section 75 para 2. "The absence from work without acceptable reasons and causes severe damage to the government organization or the absence from work that is longer than fifteen days and that is without acceptable reasons is a major disciplinary matter". This provision lists two conditions which constitute a severe disciplinary matter: 1) the absentee cannot provide acceptable reasons for such an absence and 2) the absence causes severe damages to the government organization, or the absence period is longer than 15 days. Therefore, in determining guilt under this provision, the superordinate is required to consider: (1) the nature of the damage, (2) the duration of the absence, and (3) the reasons for the absence. The following cases illustrate the application of this provision.

> **Mr. R's case.** *In this case, the committee found that Mr. R was absent from work since June 28, 1979. Mr. R did not notify the principal. The principal tried to cantact Mr. R but was unsuccessful. The search for Mr. R continued until December 6, 1979 but no one knew where he was. Since Mr. R had teaching duties to perform but was absent from performing the duty longer than 15 days without acceptable reasons, he was therefore dismissed from the position (the Department of General Education Order #852/2523 dated February 21, 1980).*

> **Mr. AK's case.** *Mr. AK was accused on the grounds of being absent from work longer than 15 days without acceptable reasons. The committee found that Mr. AK did not come to teach during January 2 - March 14, 1979 (more than 15 days) without prior notification. Mr. AK explained to the committee that during that period he was sick with a stomach ache and tuberculosis. The investigating committee asked Mr. AK to provide the physician's statement to support his argument. Mr. AK could not find the physician's statement to support his claim but he only argued that he purchased medicine from the Provincial Tuberculosis Centre and healed himself at home. The committee enquired at the centre and found that the centre had no record of Mr. AK. The reason cited by Mr. AK was unacceptable. He was therefore dismissed from the position. (the Department of General Education Order #3408/2523 dated July 11, 1980.)*

> Section 76: The civil servant is required to be polite, and to maintain and develop unity among government officials, and help others in performing official duties.

This provision suggests three types of behavior which are considered undisciplined : 1) being impolite, 2) disrupting unity among governmennt officials, and 3) being unhelpful to others in performing official duties. Na-nakon et al. (1982:65) explain the term 'impolite' as "impolite refers to any kind of expression, orally or behaviorally, which is not gentle, not nice, or not amiable. This includes the use of inappropriate language on an inappropriate occasion". In many cases, the impolite expression creates disunity and is not helpful. However, it should be noted that the impolite expression which is considered an offence under this provision refers to the teacher using such an expression to a superordinate, a colleague or a student only. An impolite expression between a teacher and citizens is not considered an offence under this provision. To help the reader better understand this provision, these four disciplinary cases are presented.

> **Mr. AM's case.** *Mr. AM was accused on the grounds of speaking inappropriate language in the classroom. In the investigation, the committee found that while teaching, Mr. AM spoke impolite words to his female students, such as, "you look like a prostitute while standing at the bus stop", "you look sexy"*[20]*. His inappropriate language disappointed most female students. Therefore, Mr. AM was issued a probation (the Department of General Education Order #1495/2523 dated April 7, 1980).*

> **Mr. P's case.** *Mr. P was accused on the grounds of expressing impolite behavior before the school principal. In the investigation, the committee found that Mr. P developed a loving relationship with a*

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[20] Sexy is classified as an impolite term by the Thai. The teacher should not speak this term, especially before his female students

female teacher in spite of having a legal wife. The principal called the female teacher in for counseling. Mr. P learned about the incident and was very furious. He went to the second floor which was just above the office of the principal and kicked a garbage can a few times. The noise bothered students and other teachers. After being surrounded by colleagues, Mr. P went down to the general office. There he saw the principal. Mr. P took a glass of water from the cooler and was about to drink, but dropped the glass on the floor. The glass shattered on the floor. The principal asked Mr. P if something had gone wrong. Mr. P responded impolitely and stepped in front of the principal and kicked the office chair. The principal stopped talking with him. Mr. P left the principal's office and kicked two other gabage cans located beside the general office. Mr. P 's expression was considered impolite. He was issued a one-month 10 percent salary cutback (the Department of General Education Order #4917/2523 dated September 23,1980).

Mr. AC's case. *Mr. AC was accused on the grounds of making a poster defaming the sheriff and other administrators in the district office. In the investigation, the committee found that the two sides had had conflicts concerning office regulations. Both sides had written a few negative letters. The conflict worsened when the Deputy Sheriff was hit on the head inside the temporary restaurant which was built on the annual exhibition ground and supervised by Mr. AC. The Sheriff ordered a jail term for Mr. AC for participating in the attack. Mr. AC was later found innocent but was still furious. He made a few posters insulting the sheriff and colleagues for that incident and posted them on the school advertising board. In addition, he distributed letters to teachers in the province asking them to determine the new educational role of the sheriff and some other administrators at the district level. The production of negative correspondence between Mr. AC and the sheriff, the production of posters defaming the sheriff and colleagues, and the distribution of letters aimed at determining new educational roles for the administrators were considered activities which could cause disunity among government officials. Mr. AC was issued a two-month 10 percent salary cutback (the Province of Chaiyapoom's Order #2241/2523 dated October 3, 1980).*

> **Mr. H's case.** *Mr. H was accused on the grounds of disruptive arguing in the school cooperative meeting. In the investigation, the committee found that Mr. H, Head of the English Department, planned to organize a welcome party for the newly-appointed teacher in his Department. He made a request to the administrative committee of the school cooperative asking for a contingency fund to use in the organization of the party. The committee refused his request. Mr. H was very furious. He used impolite language and acted furiously before the administrative comittee. Mr. H's behavior could cause disunity among teachers. He was therefore issued a four-month 10 percent salary cutback (the Province of Surin Order #2060/2521 dated November 20, 1978).*

The provision does not say if the violator of this provision is to receive a severe punishment. Therefore the teacher who violates Section 76 shall receive a minor punishment.

> Section 77: The civil servant is required to be polite, friendly, and just. He is required not to hesitate in providing or giving convenience, help, or assistance to citizens who contact him concerning his office duties.
>
> The civil servant must not look down upon, insult, or suppress citizens. These are major disciplinary matters.

This section contains two provisions. The teacher who violates the first provision shall receive a minor punishment. The one who violates the second provision shall receive a severe punishment. Details of each provision are discussed below.

Section 77 para 1: "The civil servant is required to be polite, friendly, and just. He is required not to hesitate in providing or giving convenience, help, or assistance to citizens who contact him concerning his office duties".

This provision lists five improper behaviors: 1) being impolite to the citizen who contact him concerning his office duties, 2) being unfriendly to the citizen who contacts him concerning his office duties, 3) being unjust to the person who contacts him concerning his office duties, 4) being hesitant in providing convenience to the citizen who contacts him concerning his office duties, and 5) being hesitant in giving help or assistance to the person who contacts him concerning his office duties. According to these explanations, the teacher will be guilty under this provision only when these undesirable behaviors are exhibited while performing office duties. To help the reader better understand this provision, a teacher disciplinary case is presented.

> **Mr. A's case.** *Mr. A was accused on the grounds of not providing convenience to a construction company manager. In the investigation, the committee found that on June 17, 1980, the construction company manager wanted to know about the construction site of the school washroom as it was advertised by the government. Mr. A refused to tell the manager about the planned location citing that he was too busy and asked the manager to come back another day. Since Mr. A was the school principal and had an official duty to show the construction site to that contractor, he was therefore issued a one-step salary demotion (the Province of Chumpon Order #965/2523 dated September 23, 1980).*

Section 77 para 2: "The civil servant must not look down upon, insult, or suppress citizens. These are major disciplinary matters." According to this provision, the teacher will be guilty if: 1) he identifies himself as a teacher during the time he exhibits these undesirable behaviors, 2) the one who is looked down upon, insulted, or suppressed is a citizen, 3) the teacher intentionally looks down upon, insults, or suppresses the citizen, and 4) the looking down upon, the insulting, or the suppressing causes disrepute to government institutions. A behavior which is not composed of these four components shall not be considered an offence under this provision. A policeman's disciplinary case should help us better understand this provision (cited in Na-nakon et al., 1982:68-69).

> *In the 1975 general election, a policeman conducted a campaign defaming the leader of a political party. He asked the people not to vote for that leader. He also delineated corrupt behaviors which were allegedly exhibited by the leader of the political party and his wife at the time when he was holding a high position in the Department of Police. The policeman was put out of service by the Department of Police's Order on the grounds of insulting citizens.*
>
> *The policeman appealed to the Civil Service Commission. The commission ruled that the campaign was based on belief in democracy. This policeman gave out information which was useful to people in making a decision. In addition, the campaign also stimulated people to participate in the general election. Therefore, the policeman was innocent. Further, the commission explained that the policemen was not involved in the election. Nor was it found that he identified himself to the public during the campaign. The campaign was conducted after office hours and on holidays. The defamation was only a part of the political campaign, not an insult. In addition, the court had already denied the claim of the political leader. The appeal of the policeman was reasonable.*
>
> *The policeman was finally reappointed to the position and was entitled to full compensation for the time lost.*

A review of teacher disciplinary cases indicates no one has been punished under this ground during the period under review.

> Section 78: The civil servant is directed not to secure or let others secure benefits which could bring unjust practices or disrepute to his official position.

In determining an offence under this provision, the superordinate or the committee should look into the position of individual teachers and the feeling of the society towards the offending behavior. If the offender holds a high position worthy of high respect and acceptance or a position worthy of trust and respect (e.g. be the school principal), that offender shall receive a more severe punishment than the one who holds a lower position. The disciplinary cases which follow should help us better understand this provision.

> **Mrs. S's case (already cited in another connection also).** *In this case, the committee found that Mrs. S acted as the share organizer*[21] *for her father who passed away unexpectedly. After acting as the organizer for her father for some time, Mrs. S organized two other shares. The shares continued for a time and finally collapsed. The share holders who had already won the bid refused to reimburse their debts. Therefore, Mrs. S had no money to pay to the remaining share holders. Since Mrs. S was a teacher and had organized shares but was unable to secure money to pay to the remaining participants when the share collapsed, she was issued a four-month 10 percent salary cutback (the Ministry of Education Order #SP 137/2523 dated March 19,1980).*

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[21] A very popular activity in Thailand not unlike a limited lottery.

> **Mr. AE's case.** *In this case, the committee found that Mr. AE indirectly participated in the smuggling of medicine along the northeast border. He entrusted some money to his relative who then purchased medicine from a store in Bangkok and smuggled it to the Laotian boarder. The smuggling was detected by the Thai patrol. Mr. AE's relative was imprisoned. Mr. AE himself was issued a probation (the Province of Nongkai Order #734/2523 dated February 14, 1980).*

The offence under this provision is generally considered a minor case. However, if the offence brings severe damages or disrepute to government institutions, the offender shall be guilty under the provision of Section 81 which may lead to a more severe sentance.

> Section 79: The civil servant is directed not to hold a managing position or other equivalent position in a corporation or company.

This provision was later modified by the Order of the Leader of the Reconstructional Party #38/2519 dated October 21, 1976 below:

> Clause 5: The civil servant is directed not to hold a managing position or any other equivalent position in a corporation, a company, or a private store that could make people believe that the corporation, the company, or the store uses his name to secure benefits either directly or indirectly.
>
> If the civil servant is holding such a position on the effective date, he is required to withdraw himself from the position within thirty days....
>
> The violation of this order is a severe disciplinary matter.

This order came into force after the enforcement of the CSRA 1975, and thus modified Section 79 of that act. According to this provision, behavior which is considered improper may be one of the following: 1) being the manager,

2) being a member of the managing committee, or 3) holding any position which is equivalent to the managing committee of the company, the corporation, or the department store that could make people believe that the company, the corporation, or the department store uses his name to secure benefits.

The order confuses many administrators. The Civil Service Commission once ruled that acting as an agent of an insurance company is not an offence under this provision if the selling of insurance is not done during office hours (The Civil Service Commission Circular #SR0709/126159 dated August 10, 1978).

Further, to clarify this order, the Office of the Civil Service Commission has ruled that the performing of non-office work after office hours (e.g., acting as a special tutor or accounting inspector) is not an offence under this provision unless the activity leads people to believe that a store or a company uses his name to secure benefits.

No one has been punished under this provision during the period under review.

Section 80: The civil servant is required not to hold an administrative position in a political party.

The administrative position refers to the positions which appear on the lists of officers of the political parties. The teacher whose name appears on such a list will be guilty under this provision.

With regard to this provision, however, the Council of Ministers announced that the government official may participate to some extent in political activities (the Council of Ministers Regulation Concerning Political Conduct of Government Officials 1956 dated March 16, 1956). The exception is detailed below:

> Clause 2: The civil servant may register to be a member of a legal political party. He may attend a meeting organized by the party. However, in dealing with the people or performing office duties, he is required to perform duties fairly and impersonally....

Therefore, the teacher may register as a member of a political party and may attend meetings organized by the party. A review of teacher disciplinary cases indicates that no teacher has been punished under this provision during the period under review.

> Section 81: The civil servant is directed not to misbehave. For instance, he is required: not to behave as a delinquent person; not to drink excessively; not to be occupied by gambling; not to engage in or let others engage in activities that could bring disrepute to his own position or duties.
>
> The offence which leads to an imprisonment or any other severe punishment as ruled on by the court, except that it is a petty offence or that it is committed by negligence, or the offence which is classified as a major misbehavior is considered a severe disciplinary matter.

This provision is the last provision of the sixteen disciplinary laws. The term 'misbehavior' or 'major misbehavior' included in this provision is intended to apply to all misbehaviors which are not dealt with in other provisions. In other words, it is the concluding provision that subsumes all others. Suwan Chanasongkam, Director of the Division of Appeal and Grievance, explains (1981:17):

> The inclusion of Section 81 para 2 in the disciplinary law is to apply it to severe offending behaviors which are not included in other provisions. It is intended for use as a sweeper. It shall be applied to all minor or major offending behaviors. In other words, the minor offending behaviors or the major offending behavior which is included in other provisions can also be classified as a misbehavior under this provision.

To better understand this provision, the writer discusses each paragraph of this provision below.

> Section 81 para 1: "The civil servant is directed not to misbehave. For instance, he is required: not to behave as a delinquent person; not to drink excessively; not to be occupied by gambling; and not to engage or let others engage in activities that can bring disrepute to his own position or duties".

This provision prohibits government officials from misbehavior only and cites some examples of misbehaviors. However, to determine offensivenes of other types of behaviors, Na-nakon et al. (1982:88) suggest that the superordinate or the committee may consult these three components: 1) the reputation of the official, 2) the feeling of the society towards that behavior, and 3) the intention of the accused official in behaving in such a way.

The reputation of the official. In order to determine guilt under this provision, the committee or the superordinate must look into negative consequences to the reputation of the accused teacher of such a behavior. The superordinate needs to consult behavioral standards of an individual government official. This means that some types of behavior will be considered misleading only when it is committed by the official who holds a certain position. The following case should help us understand this provision.

> **Mr.AL's case.** *Mr.AL was teaching at a junior high school in Petchaburee. In October, 1975, Mr.AL attended a seminar in Phuket. There, he met Mrs. ALB who was a receptionist at Noree Restuarant. After the seminar, the two went back to Petchaburee and stayed together in the school government housing without registering for marriage. Four months later, conflicts between the two developed. Mr.AL joined the school band and practiced his musical lessons at school and many times stayed overnight at school. Quite a few times Mrs. ALB was left alone. She was very depressed and also pregnant. She tried a few times to wound Mr.AL with a broken bottle and knife. Mr.AL realized that he could be wounded any time if he continued to stay with her. Therefore, he moved his belongings secretly out of the house to his parent's house and invited witnesses for both sides to help settle the case. Before the witnesses (including the district prosecutor), Mrs. ALB demanded that: 1) Mr.AL pay her 5,000 baht for personal damages, 2) before the maternity date, Mr.AL must pay her 200 baht/month, 3) before the maternity date and during the restoration period, she must be permitted to stay in the school government housing under Mr.AL's occupancy, and 4) she must have custody of the child. Mr.AL fulfilled all claims. After the restoration period, Mrs. ALB moved to stay with her friend in downtown Petchaburee. At this time she felt that the previous settlement was unjust. She wanted a reunion or that Mr.AL to pay more for rearing the child. Mr.AL refused her new claims. Mrs. ALB took the case to the district prosecutor but the prosecutor refused her claim. She therefore took the case to Mr.AL's superordinate. After the investigation, the superordinate stated:*
>
> > *Since Mr.AL is a teacher, he needs to act as a good exemplar to his students. He needs to maintain his good reputation. The act of staying together with Mrs. ALB for that long period without marriage registration and the refusal to rear his child are considered practices that constitute defamation of*

> *his own reputation.*
> *Therefore, Mr.AL was issued a one-step salary demotion (the Ministry of Education Order #SP 430/2521 dated October 27, 1978).*

The offence that brings or may bring disrepute to one's own position and is considered an offence under this provision refers to the wrongdoing that brings disrepute to teachers in general. It is not necessary that the offence bring benefits to the teacher. Any misleading behavior which can bring or does bring disrepute to the teacher or his position is considered an offence. But, if the offence that brings or might bring disrepute to the teacher is related to the securing of benefit, directly or indirectly, such an offence will be considered an offence under Section 78 of the Act as well.

The feeling of society towards that behavior. In determining guilt under this provision, it is necessary that the superordinate evaluate societal views of that behavior. If members of the society feel that the teacher who holds such a position should not behave in such a way, that teacher will then be considered an offender under this provision. The following case should clarify this provision.

> **Mrs. AW's case.** *Mrs. AW sold a piece of land by installment to her colleague. After the installment was paid, Mrs. AW could not give the title deed to the piece of land to her colleague. The colleague requested reimbursement. Mrs. AW gave a post dated cheque to the purchaser. That purchaser tried to cash the check on the specified date but was refused by the bank due to insufficient funds. The court ruled that*

> *Mrs. AW be imprisoned for three months. But since she had never committed any offence in the past, Mrs. AW was released on a one-year parole. After reviewing the case, Mrs. AW's superordinate stated:*
>
> > *Mrs. AW is a teacher. The sale of land by not giving the title deed to the piece of land to the purchaser and the reimbursement through the insufficient fund cheque are considered an improper conduct of teachers.*
>
> *Therefore, Mrs. AW was issued a two-month 10 percent salary cutback (the Department of General Education Order #5236/2521 dated December 18, 1978).*
>
> **Mr. AT's case**. *Mr. AT illegally harvested lumber in the jungle. The provincial prosecutor brought the case against him in court. Mr. AT was fined 1,000 baht, and the trucks and other tools which were used in the harvesting were confiscated. After reviewing the case, the committee stated:*
>
> > *Mr. AT is a teacher. He harvested lumber although knowing that such an undertaking is prohibited by the law. The teacher should not engage in such an undertaking.*
>
> *Mr. AT was finally issued a two-month 10 percent salary cutback* [22] *(the Province of Surin Order #1849/2521 dated October 6, 1978).*

The intention of the accused official in committing the offence. Another offending component under this provision is the intention of the accused teacher in committing the offence. If the accused teacher commits the offence intentionally and purposefully, he will be guilty under this provision. Conversely, if the accused teacher commits the offence unintentionally, he would be innocent. For instance, the Civil Service Commission had ruled the case of the policeman who had campaigned against the leader of a political party that (Na-nakon et al., 1982:90):

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[22] This case shall also be considered an offence under Section 78.

> ...this policeman did not campaign against the political party leader because of the viciousness of that leader. The content of the campaign was very constructive and beneficial to the public. He is not guilty as accused.

According to the above explanation, the accused teacher will be considered an offender if his conduct is composed of the three mentioned offending components. The accused teacher will not be guilty if any of the offending components is not satisfied. To help the reader determine guilt under this provision, the provision also cites four examples of the misleading behavior: 1) being a delinquent person, 2) drinking to excess, 3) being occupied by gambling, and 4) any other conducts which could bring disrepute to the teacher. Examples 1 to 3 are clear cut. The person who is classified as a delinquent person must have behaved in such a way for some certain period. The engaging in the delinquent behavior of the teacher for only a day or two cannot make him a delinquent person. In addition, the conscientious drinking or consuming of legally intoxicating products is not considered an improper practice. But the consuming of illegally intoxicating products (i.e. marijuana, cocaine) is an improper action even though he remains conscientious. Finally, the teacher who is occupied by gambling is considered a guilty official under this provision. Especially, for teachers, the Council of Ministers circulated a directive that teachers are definitely prohibited from gambling (the Council of

Ministers Circular #NW208/2496 dated September 3,1953). A single indulging in gambling could lead to removal.

> Section 81 para 2: "The offence which leads to an imprisonment or any other severe punishment as ruled on by the court, except that it is a petty offence or that it is committed by negligence, or any other offence which is classified as a major misbehavior is considered a major disciplinary matter".

This provision lists two types of behaviors which are considered a severe disciplinary matter: 1) committing a crime and being jailed or executed by the court order and 2) committing or facilitating the committing of any other offence which could make him disreputable. In the first case, the imprisonment which is considered a fault under this provision must not be the imprisonment that is caused by a petty offence or negligence. The teacher who is imprisoned due to petty offence or negligence shall only receive a minor punishment.

In addition, it should be noted that Clause 1 of the Civil Service Regulation #7 (1975) states that the superordinate may issue a severe punishement order to the teacher who is imprisoned by the court order without requiring any investigation. The superordinate is required only to report the punishment recommendation to the Department Teachers' Subcommission prior to the issuing of the order. The following case should help us understand this provision.

> **Mr. AQ's case.** *Mr. AQ invaded his colleague's house and wounded two female house servants with his hatchet in the afternoon of May 16, 1978. One of the house servants was seriously injured. In the incident, an outsider passed by the house and called the police. Mr. AQ was later imprisoned for 4 years and five months by the Nakonratchaseema Court Order #926/2521 dated November 13, 1978. Mr. AQ was guilty under the provision of Section 81 para 2 and Clause 1 of the Civil Service Regulation #7 (1975). He was therefore dismissed from the position (the Department of General Education Order #1805/2522 dated May 30, 1979).*

In other cases, the determination of the severity of the offence under Section 81 para 2 is based on 1) the reputation of the teacher, 2) the feeling of the society towards the behavior, and 3) the intention of the accused teacher in committing the offence. These three offending components determine the level of punishment of the offender.

In addition, there are various types of misleading behavior. Therefore, to guide practice of teachers, the government or the related organization normally produces circulars explaining some specific behaviors which are considered misleading behaviors. The National Teachers' Council, for example, includes some misleading behavior in the *Teacher Code of Ethics*. Therefore, the violation of the *Teacher Code of Ethics* is considered an offence under this provision. However, the determination of the level of punishment is still based on the three components mentioned. To broaden the reader's perception on this matter, the following disciplinary cases are presented.

Mr.F's case (already cited in another connection also). *Mr.F collected 15,000 baht from the parents of five teachers' college graduates who were looking for teaching jobs. In the collection, Mr.F promised that he would help them pass the appointment examination and get teaching jobs immediately following the announcement of the appointment examination result. Unluckily, the five teachers' college graduates failed to pass the exam. None got teaching jobs. The parents demanded reimbursement. But Mr.F avoided discussing the matter with them. However, finally, Mr.F was forced to sign a repayment contract with the parents. Again, Mr.F breached the contract. He was therefore dismissed from the position (the Department of General Education Order #1506/2522 dated May 8, 1979).*

Mr. AG's case. *Mr. AG was accused on the grounds of having sexual relations with a student of the school where he taught. In the investigation, the committee found that in the evening of March 11, 1977, the grade XII students organized a farewell party at the school auditorium. All grade XII students were invited to attend the party, and parents were notified that the students would stay overnight at the school. Mr. AG took this opportunity to take out one of the female student whom he knew to the restuarant in town. There, the two had some beer and food. After the supper, Mr. AG drove the student back to the auditorium but she refused to leave the car. Mr. AG and the student then left the auditorium and drove aimlessly on the highway for about one hour. Finally, the two arrived at a bungalow and decided to stay over night together at that Bungalow. The two promised to marry each other. The following morning, Mr. AG drove her home. The student told everthing that had happened to her in the previous night to her parents. The parents brought the case to the police station. Mr. AG paid the parents 40,000 baht for damages. Both sides were satisfied. However, since Mr. AG was a teacher, the sexual relation developed between him and his student ran contrary to the views of society and violated the Teacher Code of Ethics. He was therefore dismissed from the position (the Department of General Education Order #1366/2521 dated June 8,1978).*

Mr. AF's case (already cited in another connection also). *Mr. AF used forged receipts which were received from a stranger to claim 5,761 baht for hospital allowance. During the investigation, Mr. AF reimbursed the money to the Department. However, a*

> *Civil Service Commission Circular states that fraudulent claims for traveling allowance, hospital allowance, or any other similar claim is a fraud (the Civil Service Commission Circular #SR 0905/W6 dated May 28, 1968). The official who commits fraud must be at least put out of service. Mr. AF was therefore put out of service*[23]*. (the Department of General Education Order #3857/2521 dated September 28, 1978). Mr. AF was also imprisoned for one year and four months by court order.*

The teacher is expected by society to act as a good exemplar to his students. Many offending behaviors which are not severe disciplinary matters for other groups of officials are viewed as major disciplinary faults for teachers. For instance, the Council of Ministers Circular #NW 208/2496 dated September 3, 1953 states that the teacher is definitely prohibited from gambling and excessive drinking. The teacher who engages in these activities must be at least terminated. But for other groups of officials, the superordinate may use his own discretion to decide the case.

These sixteen provisions of disciplinary law are used as guides in performing school duties. At the same time, they are used as tools to control behavior of teachers by the superordinate. And to effectively control behavior of the teacher, each provision also prescribes the level of punishment to the offender who violates each individual provision. The teacher who commits a petty offence may receive only a probation while the one who commits a severe one may receive a dismissal. The degree of disrepute and damage that the offence brings to the accused, to the government institution, and to the public, determines the level of punishment of the offender. Disciplinary cases cited in this chapter should guide the teacher to perform his official duties with more confidence. Also, the cases should help the superordinate to decide disciplinary cases more effectively.

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[23] Mr. AF initially received a demotion. The putting out of service was dictated by the Prime Minister

THE REMOVAL PROCEDURE

Section 94 of the CSRA 1975 states that a teacher shall be removed from a position under any of the following grounds:

1. death;
2. be removed under the provision of the pension act;
3. be granted a resignation under the provision of Section 95;
4. be removed under the provision of Section 46, 59, 90, 96, 97, 98, 99, or 100; or
5. be terminated, put out of service, or dismissed under the disciplinary law.

Since the removal under the disciplinary law has already been discussed, the following section centers only on "removal" under Section 94(1)(2)(3) and (4).

Removal by death. The deceased teacher will be removed automatically. The superordinate does not need to issue the suspension order to the teacher. He is only required to notify the Director-General, the Office of the Teachers' Commission (through the Director-General), and the

Comptroller General's Department.

Removal under the pension act. Section 19 of the Government Official Pension Act 1951 (revised 1980) states:

> The government official who is already 60 by the end of the budgetary year is required to retire from the office. Where necessary, the Council of Ministers may grant a one-year extension to the government official who is younger than 65 under any of these conditions: that official is extremely useful to the maintaining of the stability of the Kingdom; that official is extremely useful to the development of the country or education; that official is a royal palace official; or that official is the chief aide-de camp to the King.
>
> This provision is not applied to the political official.

According to this provision, the teacher who turns 60 years of age before October 1st (which is the beginning date of the budgetary year) is required to retire from teaching. In practice, the Office of the Teachers' Commission which maintains official records of the teacher, produces the list of retiring teachers annually and gives the list to the appropriate Department. After receiving the list, the superordinate will notify the retiring teacher to deliver his official duties to his replacement before his retirement date. In addition, if the retiring teacher is entitled to an annual increment, the superordinate may award the increment specifically to the retiring teacher before the final day of his employment (September 30th of every year). This will be beneficial to teachers.

Removal under the provision of Section 95. Section 95 of the CSRA 1975 states that:

> The civil servant who wishes to resign is required to submit the resignation form to the primary superordinate. The primary superordinate is required to convey the form to the superordinate who has appointing power under the provision of Section 44 to make decisions. After the resignation is granted, the civil servant shall resign from the office.
>
> The resignation shall be granted immediately to the civil servant who is going to take the political position or to run in the general election.
>
> In other cases, the authorized superordinate may hold back the request for resignation if such a delay is extremely beneficial to the operation of government organizations. However, the delay shall not be longer than three months.

According to this provision, the resignation will be effective right after the submission of the resignation form if the teacher is going to take the political position or to run in the general election.

In other cases, the resigning teacher is required to fill out the form and submit it to the primary superordinate (the principal, the Director of the School, or...). The primary superordinate may make some comments that could help the authorized superordinate to make the decision. Importantly, the resigning teacher is required to wait for the granting of the resignation. In other words, he must not be absent from work until the resignation is granted. One needs to remember that the absence from work that is longer than 15 days shall lead to a dismissal. He cannot cite an oral agreement as a legal resignation.

Regarding the delaying power, the superordinate may hold back the resigning request if it is found that such a delay brings benefits to the government organization. The superordinate shall not cite any other reason in holding back the request. In addition, the holding period of all requests shall not be longer than three months.

Removal under the provision of some other Sections of the CSRA 1975. In addition to the major disciplinary punishment, the teacher may be removed under any of these eight provisions:

1) Removal under Section 46 of the CSRA 1975. The first and second paragraphs of this provision state:

> The person who is appointed to the civil position under Section 38 para 1 and Section 42 is required to practice his tenure as it is stated in the Civil Service Regulation. During or after the completion of the practising period, the primary superordinate is required to make reports concerning general conducts, knowledge, competence, and fitness for the position of the non-tenured official to the superordinate who has appointing power under the provision of Section 42.
>
> After receiving the report, the authorized superordinate may look into competence and fitness for the position of the non-tenured official. If that person is competent and fit for the position, he shall be awarded tenure. If he is not fit for the position, the superordinate is required to issue a removal order to that person.

In the case of teachers, Clause 2 of the Civil Service Regulation #3 (1975) states that the non-tenured teacher must be on probation at least six months before being entitled to tenure. After this period, the principal or the Director of the school is required to submit a report suggesting the appointment approval or dismissal of this teacher. If the requirements are fulfilled, the Director-General or the Director of the Office of the

Provincial Elementary Education shall award tenure to the prospective teacher. However, if the requirements are not fulfilled, the authorized superordinate is required to remove that non-tenured teacher without waiting for approval from the Department Teachers' Subcommission.

2) Removal under Section 59 of the CSRA 1975. Section 59 of this act states:

> After being appointed to the position under the provision of Section 38, 42, 43, 53, 55, 56, 57, or 58, if it is later found that the civil servant lacks any of the general qualifications as are stated in Section 24 prior to the appointment date and such a defect was not exempted by the Civil Service Commission under the provision of Section 48, the superordinate who has appointing power under the provision of Section 44 is required to remove that civil servant immediately. This removal does not affect any decision or performance made by the civil servant prior to the removal respecting neither his salary nor benefits. If the appointment was done in good faith, that civil servant is also entitled to a special government pension under the provision of the pension act.

This provision explains that no matter the selection process was (i.e. by taking the appointment examination, formal selection, informal selection, reappointing to the position, or...), if it is found that the appointed teacher lacks any of the general qualifications as are included in Section 23 of the TRA 1980 prior to the appointment date (i.e. was not a Thai citizen, was not 18 years of age, etc), the authorized superordinate is required to remove that teacher immediately without requesting approval from the Department Teachers' Subcommission. To the present time, no teacher has been removed under this Section.

3) Removal under Section 90. Section 90 of the CSRA 1975 states:

> The superordinate under the provision of Section 86 or 92 may issue a temporary removal to the civil servant who is accused on the grounds of committing a severe disciplinary matter unless the accusation was caused by a petty criminal offence or due to negligence.
>
> After the investigation, if it is found that the civil servant is innocent (or guilty but the level of punishment is lower than the termination) the authorized superordinate shall reappoint that civil servant to the same or equivalent position.

Removal under this provision is a temporary removal. If it is later found that the accused teacher is guilty, the authorized superordinate shall issue the punishment order accordingly. Conversely, if the accused teacher is innocent, he will be reappointed to the same or eqivalent position.

4) Removal under Section 96. Section 96 of the CSRA 1975 states:

> The superordinate under the provision of Section 44 may remove the civil servant under the provision of the pension act. In addition, the superordinate may remove the civil servant with special pension under any of these conditions:
> 1. that civil servant has suffered from lengthy sickness and could not perform the office duties regularly;
> 2. that civil servant is appointed to a non-official position by the Council of Ministers;
> 3. that civil servant lacks the general qualification under the provision of Section 24(1), (4), or (5).

This provision explains that the superordinate shall remove the teacher under two major conditions: 1) under the provision of the Pension Act and 2) under the CSRA 1975.

Regarding the removal under provisions of the Government Official Pension Act 1951, Section 11 of this act states "The special pension shall be paid to the official whose position is abolished and who is removed as a result of innocence." Therefore, if the position is abolished, the teacher may be removed and awarded a special pension. Further, Section 14 of this act states "The long-term service pension shall be paid to the official who has served in the government office for thirty years or longer."

The teacher who has already served in the office for thirty years or longer may be removed with long-term pension. To set standards for practice in issuing a removal order under this provision, the Council of Ministers proclaimed that the official may be removed with long-range pension if:

1. his knowledge is not fit to the position;
2. his knowledge is limited or out-dated and the government can find a better replacement;
3. he has poor health, such as a long-term sickness, or contagious diseases;
4. he is lazy;
5. he behaves unacceptably, e.g., is a delinquent person, drinks to excess, or is excessively in debt;
6. he does not believe in the constitutional form of government;
7. he violates any of the disciplinary laws and is issued a disciplinary punishment.

With regard to the removal under the CSRA 1975, the law states clearly that the teacher may be removed with special pension under the provisions of Section 96(1)(2)(3) which have already been discussed.

5) Removal under Section 97. Section 97 of the CSRA 1975 states:

> If it is found that the civil servant is incompetent and is not fit to the position for any reason and that the retention of such a civil servant could bring damage to the government institution, the superordinate who has appointing power under the provision of Section 44 is required to name the committee to investigate the case. In the investigation, the superordinate is required to provide accusation statements and supporting evidence to the accused official prior to the first hearing, and provide opportunities to him to plead his case. After the investigation, if it is found that the accused official should be removed, the superodinate, under Section 44, may remove that official by following the provisions of Section 86, 86 para 3, 86 para 5, 86 para 2, 87, and 88.

Removal of a teacher on the grounds of incompetence or unfitness for the position must be done after the investigation. However, the provision does not require that the investigating committee follow the Civil Service Regulation #6(1975) in conducting the investigation. In other words, the committee has discretionary power in conducting the investigation. It is only required that the superordinate convey the removal recommendation to the Department Teachers' Subcommission for consideration prior to issuing the removal order. No disciplinary case under this provision is recorded during the period under review.

6) Removal under Section 98. Section 98 of the CSRA 1975 states:

> The superordinate may remove the civil servant who is initially investigated on the grounds of committing a severe disciplinary matter but is later found innocent if the retention of that official could bring disrepute or damage to the government. In such a case, Section

> 97 of this act shall be applied. And the removed official is entitled to a special pension.

Removal of the teacher on these grounds shall be done after the approval of the Department Teachers' Subcommision. However, no investigation is required prior to the removal. No removal under this provision is recorded during the period under review.

7) Removal under Section 99. Section 99 of the CSRA 1975 states:

> The superordinate under Section 44 may remove, with special pension, the civil servant who is imprisoned by the court order due to a petty offence which is not liable to lead to the termination, put out of service, or dismissal under the disciplinary law.

The removal under this provision may be done immediately without requiring approval from the Department subcommission. However, it is necessary that the superordinate have the court ruling indicating the imprisonment. No removal under this provision is recorded during the period under review.

8) Removal under Section 100. Section 100 of the CSRA 1975 states "The superordinate under Section 44 is required to remove the civil servant who is recruited to serve in military service under the military law." Since Section 30 of the Military Service Act 1954 states that all Thai men who are not exempted under the act are required to attend military training courses for at least two years, the male teacher who does not receive exemption under this law may be recruited and shall be removed from the position.

The teacher who is removed from the office will be deprived of his official status. If the removal is done under Section 94(5) of the CSRA 1975, the removal will affect general qualifications of the removed person. The removed person will lose opportunities to seek teaching or other government jobs. In the process, if the teacher perceives that he is removed or punished unjustly or unreasonably, he may appeal to the authorized superordinate. Details of the appeal procedure follow.

THE APPEAL PROCEDURE

What is an Appeal?. The appeal procedure is a component of the disciplinary process. The disciplined teacher who perceives injustice in the punishment may appeal to the superordinate. With regard to the appeal, Section 103 of the CSRA 1975 states:

> The civil servant who is punished or removed under whatsoever grounds of this act, except the temporary removal under Section 90, may present his appeal to the superordinate as it is stated in this chapter.

This provision guarantees the right to appeal of the disciplined or the removed teacher. The teacher may present his appeal to the superordinate under any of these conditions: 1) he had been disciplined under the provision of Section 66-81, 2) he had been removed under the provision of Section 46, or 3) he had been removed under Section 59, 96, 97, 98, 99, and 100. Being disciplined under other laws, being removed temporarily, being removed under a special order of the Prime Minister, or being removed under a special order of the leader of the revolutionary party shall not be used as grounds for appeal.

In addition, it should be noted that the appeal is the procedure which allows for the presentation of newly secured evidence and facts to dispute the original accusation, but is not an accusation. The appellant cannot simply accuse the superordinate in making the appeal, neither can he blame him for not maintaining the consistency of the punishment. The following cases should illustrate this process.

> **Miss V's case** (already cited in another connection also). *Miss V was accused on the grounds of not naming teachers to guard the school at night time even though she was directed to do so by the Provincial Education Officer and the Council of Ministers' circular. The Governor named the committee to investigate the case and found that Miss V was guilty as accused. The Governor issued a two-month 25 percent salary cutback to Miss V (the Province of Nakonpathom Order #13/2518 dated January 7,1975). Upon receiving the punishment order, Miss V appealed to the senior superordinate claiming that she was innocent. In her appeal, Miss V cited the Ministry of Interior Circular #602/2496 dated October 27, 1953 which reads that female officials are released from night time office guarding. (In the incident, the school had only 7 male teachers). In addition, Miss V also cited the Council of Ministers Circular #NW 91/2501 dated July 5, 1958 which states that Heads of the government organization may reduce their guarding system. They may name only the janitor, not the official, to guard the office at night time. Miss V argued that she had complied with these circulars. Further, she demonstrated that former principals of this school never named female teachers to guard the school at night time. The naming of female teachers to guard the school could be opposed strongly by her staff. She therefore ignored the order.*

With regard to the insubordination to the Provincial Education Officer, Miss V argued that the Provincial Education Officer was the official attached to the Office of the Permanent Secretary which was a different government organization and thus not her superordinate. The insubordination to the Provincial Education Officer was therefore not a guilt.

The citation of new circulars and the explanation about organization structure of the Ministry of Education freed Miss V from guilt. Her first punishment order was rescinded by the Memo signed by the Permanent Secretary dated October 31, 1975.

Mr. Y's case. *Mr. Y was initially punished on the grounds of presenting false information to the superordinate in claiming for housing allowance in spite of living in government housing. Mr. Y was issued a one-step salary demotion. In the appeal, Mr. Y argued:*

1. *The government house he moved in was in disrepair. He spent a lot of his own money to repair this house. In addition, he did not even know that this government housing belonged to this school.*
2. *Although the district family registration showed that he and his family members lived in government housing, in fact only his children and their guardian lived in this house. He and his wife lived in the rental house. And, the female guardian who lived in the house was not his second wife.*
3. *Although he had claimed illegally for the housing allowance for quite a long period (20 months), he was not stopped by the superordinate. In addition, the investigating committee did not follow the Civil Service Regulation #6 strictly in conducting the investigation.*
4. *He had served in schools for quite a long time, had gained many merits, and had never committed any offence; therefore, he should not have been issued such a severe punishment.*

After reviewing the appeal, the superordinate argued:

1. *Although the house was in disrepair, it was still government housing. The moving into this house made Mr. Y lose the right to claim for housing allowance as it was stated in the regulations.*
2. *Mr. Y could not cite the fact since the*

district family registration indicated that he and his family members lived in the house, and the female guardian cited was listed in the registration as his wife.

3. Mr. Y could not blame the superordinate for not stopping him from claiming for the housing allowance. The claiming for the allowance which he was not entitled to was already considered a guilt. In addition, although the committee did not conduct an oral investigation, the information received was sufficient to decide the case. This argument is unacceptable.

4. However, since Mr. Y had spent a lot of his own money to repair the house incorporated with merits he had gained in the past, he is entitled to a punishment reduction.

Therefore, Mr. Y finally received a four-month 10 percent salary cutback instead of a one-step salary demotion (the education Minister Memorandum dated December 20, 1979).

Mr. AC's case. *Mr. AC was initially accused on the grounds of creating disunity among government officials. He was issued a two-month 10 percent salary cutback. In his appeal, he argued that he was punished unfairly but did not present evidence and facts to support his argument. His appeal was therefore aborted (the Permanent Secretary's Memorandum dated 6, 1981).*

Mr. C's case. *Mr. C was initially accused on the grounds of insubordination for not attending the flag salutation ceremony as he was directed to do by the school principal. Mr. C was issued a probation. In his appeal, Mr. C argued that he was punished unfairly since some other teachers in that same school violated the same order but were not punished. After reviewing the appeal, the superordinate argued that "Mr. C does not present any evidence or fact to dispute the accusation. His appeal is therefore unaccepatble".*

Based on these cases, one can see that, in the appeal, the appellant is required to present evidence or facts to negate the original accusation. Blaming the superordinate or accusing other staff members will not help diminish the guilt.

Types of Appeal. Appeals are divided into two categories: the non-severe and the severe cases. Details of both types are discussed below.

The Appeal Procedure for the Non-severe Case. Section 104 of the CSRA 1975 states:

> For the appeal on probation, salary cutback, or salary demotion, the appellant is required to appeal to the superordinate within 15 days after receiving the punishment order.
>
> The appeal and the judgment procedure as are mentioned in para 1 must comply with the civil service regulation.

The provision requires that the appellant present his appeal to the superordinate who issued the punishment order (Clause 3:the Civil Service Regulation #10). After receiving the statement of appeal, the superordinate may produce arguments (along with facts and evidence) against the appeal and then forward the appeal and the arguments to his immediate superordinate (Clause 4: Civil Service Reguation #10). The authorized superordinate shall study the statement of appeal and the argument not more than seven days after receiving the statement of appeal and make a judgment on the case (Clause 5: Civil Service Regulation #10). His judgment is considered final, and the appellant cannot make a further appeal (Clause 6: Civil Service Regulation #10).

Appealing Procedure for Severe Cases. Section 105 of the CSRA 1975 states:

> For appeal on a termination, removal from service, or a dismissal, the appellant is required to appeal to the Civil Service Commission within 30 days after receiving the punishment order. After considering the case, the Civil Service Commission shall make recommendation concerning the appeal to the Prime Minister[24]. The Prime Minister shall decide the case accordingly. In the case where the Prime Minister does not agree with the recommendation and the commission insists on its original recommendation, the commission may present the case to the Council of Ministers.
>
> The appeal and the judgment procedure must comply with the civil service regulation.
>
> In the case where the appeal is decided by the Prime Minister or the Council of Ministers, the Department or the Ministry must accept that decision.
>
> If the appellant wins the case, the superordinate shall apply Section 90 in reappointing the appellant to the position.

THE GRIEVANCE PROCEDURE

Section 102 of the CSRA 1975 outlines the grievance procedure as follows:

> The civil servant who perceives that he is not treated rightfully under the provision of this act and that he may not appeal to the superordinate under the provision of chapter 7 (appeal procedure) of this act may present the grievance to his superordinate.
>
> The grievance and the judgment procedure must comply with the civil service regulation.

The provision lists two conditions which allow for grievances: 1) the superordinate treated him offensively or 2) the superordinate failed to treat him correctly. With regard to the first condition, the offending treatment must have already taken place and such an offending treatment must be shown to be disadvantageous to the teacher or to be malicious. For instance, the superordinate does not recommend an annual increment for the teacher even though he is entitled to it. Consequently, the teacher does not receive an annual increment. Or, the superordinate does not assign official duties to the teacher and thus hinders his advancement in his career. Any kind of treatment which is similar to these examples could be cited as a ground for grievance.

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[24] The Prime Minister is President of the Civil Service Commission

The latter condition provides that the teacher may present his grievance to the superordinate if he perceives that the superordinate failed to treat him correctly. For instance, Section 60 para 2 of the TRA 1980 states that "in the case where the superordinate does not award an annual increment to the teacher, the superordinate is required to explain to the teacher the reason for his decision". Therefore, if the teacher does not receive or receives an unsatisfactory explanation for not being awarded the annual increment, he may present his grievance to his superordinate.

In presenting the grievance, however, it should be noted that the reason that can be cited in the grievance must be one that cannot be appealed and is concerned only with personnel administration. A reason that is not concerned with personnel administration cannot be cited in the grievance.

To use the grievance more effectively, the Civil Service Regulation #9 (1975) states that the teacher shall present his own grievance. He cannot present a grievance for someone else (Clause 1). In addition, the grievance must be first presented orally and to the superordinate at whom the grievance is directed (Clause 3). If the grievance remains unsatisfied, the teacher can then present a written grievance to a more senior superordinate. Details of oral and written grievance are presented below.

__The Oral Grievance__. Clause 3 of the Civil Service Regulation #9 (1975) states:

> The grievance must be first presented orally and to the primary superordinate at whom the grievance is directed. If the explanation received is unsatisfactory or if the explanation is not produced within seven days after the presentation, it shall then be presented in written form to the superordinate within three days after receiving the first explanation. However, this provision does not affect Clause 2 of this act.

According to this provision, the teacher shall present an oral grievance to the school principal or the Director of the school. After receiving the oral grievance, the school principal or the Director is required to provide explanation to the teacher orally or in writing within seven days. However, if the superordinate cannot provide an explanation about the incident, he is required to so inform the senior superordinate and at the same time notify the teacher.

__The Written Grievance__. Clause 7 of the Civil Service Regulation #9(1975) states:

> The written grievance is required to be presented to the Director-General or the Governor who is the superordinate of the civil servant.
>
> If the Director-General or the Governor is the focus of the grievance, the civil servant shall present the grievance to the Permanent Secretary who is his superordinate.
>
> If the Permanent Secretary or the Minister is the focus of the grievance, the civil servant shall present the grievance to the Prime Minister. In such a case, the Civil Service Commission shall review the grievance then make recommendations to the Prime Minister.

This provision explains that the written grievance can be presented to the superordinate next to the primary superordinate. In most cases, the Governor, the Director of the Office of Provincial Elementary Education, or the Director-General is the superordinate who has power to review the written grievance of teachers.

In presenting the written grievance, Clause 6 of the Civil Service Regulation #9 (1975) requires that the teacher include these details in his grievance: 1) the theme of the cause of the grievance, 2) purposes of the grievance, and 3) the name, position, and office of the teacher. With regard to the theme of the cause of the grievance, the teacher is required to provide facts and situations which lead to this grievance. He needs to point out the element(s) of law or regulations that are not adhered to by the superordinate and personal damage caused by the violation of the law. Further, the teacher needs to state purposes of his grievance. For instance, the teacher who was not awarded an annual increment may ask the superordinate to revise the decision on that matter. Finally, the teacher needs to sign his name and indicate his position and office.

After receiving the grievance, the authorized superordinate will review the grievance and make the decision. With regard to the reviewing of the written grievance, Clause 8 of the Civil Service Regulation #9(1975) states:

> The superordinate under Clause 7 is required to review the grievance and make a decison within thirty days after receiving the written grievance and then notify the civil servant.
>
> The decision made by the superordinate is considered final.

THE ROLE OF THE NATIONAL TEACHERS' COUNCIL IN SETTLING APPEALS AND GRIEVANCES

The teacher personnel administration law does not specify roles of the National Teachers' Council in settling appeals and grievances. This law states only:

> Section 21 para 2: In naming the ad hoc committee on disciplinary matters, removal, grievance, or appeal, the Teachers' Commission is required to name at least two commissioners who are appointed by the Council of Ministers and commissioners who are representatives of teachers with not less than one third of the total number of the ad hoc committee to be members of each ad hoc committee.

This provision does not require that members of the ad hoc committee on grievance and appeal consist of representatives of the National Teachers' Council. It only requires that at least two members of the ad hoc committee are the teacher commissioners who are appointed by the Council of Ministers and that one third of the members of the ad hoc committee are the teacher commissioners who are representatives of teachers. The remaining members of the ad hoc committee might be selected from the two groups of commissioners mentioned or people of any occupation. In practice, the writer finds that members of the ad hoc committee are those who are members of the Teachers' Commission. None are representatives from the National Teachers' Council. In other words, the National Teachers' Council is seldom involved in settling the appeals and grievances of teachers.

SUMMARY

The discipline is an important component of personnel administration of teachers. It can be used as a guide for practice of teachers and also can be used as the superordinate's tool in controlling behaviors of his subordinates.

In order to encourage teachers to behave correctly, it is necessary that the superordinate employ both strategies: guiding and controlling. With regard to the guiding method, the superordinate is advised to educate his newly-appointed teacher on how to perform his own duties and remind the veteran to adhere strictly to the discipline. Regarding the controlling method, the superordinate is advised to punish the teacher who violates the discipline justly and fairly. The teacher who commits similar violations should be punished similarly. The controlling procedure can be used as a restraint to the violator and as a deterrent to the innocent.

Since the punishment creates resentments in the punished, the issuing of a punishment order needs to be done carefully. For a severe case, the disciplinary law requires that the superordinate name an investigating committee to investigate the case prior to the issuing of the punishment order. However, in practice, the issuing of the punishment order is more complicated. In most cases, the disciplining begins with an accusation; then the fact-finding, the investigation, the summarization of the investigation, the determination of the level of punishment, and the issuing of the punishment order. In the fact-finding stage, if the fact-finding committee cannot secure sufficient evidence and facts which support the accusation, the superordinate, with his discretionary power, may terminate the investigation. But, if the accusation is supported by the secured facts and evidence, the investigation will proceed. The accused teacher will be required to present facts and evidence to dispute the accusation. After the investigation, the investigating committee is required to summarize the investigation and present it to the superordinate. In the summarization, the committee will summarize all facts and evidence which are secured through the process and make recommendations concerning the extent of guilt and the level of punishment to the superordinate. In most cases, the superordinate issues the punishment order accordingly even though he has discretionary power to alter it. After issuing the punishment order, the superordinate is required to forward the punishment order to senior authorities and the Teachers' Commission for approval. (The Secretary-General of the Office of the Teachers' Commission acts on behalf of the commission). The approval by the commission is final.

Currently, the TRA 1980 states that the civil service disciplinary law is applicable to teachers. All laws and regulations which are applicable to civil servants are also applicable to teachers. In addition to the civil service law, the Teachers' Act 1945 (revised 1980) stipulates that teachers are required to adhere to the *Teacher Code of Ethics*. The violation of the code shall lead to disciplinary action.

Disciplined teachers, if they perceive illegality in the punishment, may present their appeals to the superordinate. However, the judgment on appeal made by the superordinate is final. The appellant cannot request the court to order the superordinate to alter the superordinate's decision. The most the disciplined teacher can do is to sue the superordinate on criminal grounds. Further, if the case cannot be appealed, the disciplined teacher may present a grievance to his superordinate. The presentation of grievance will help both sides understand each other and thus hopefully lead to mutually acceptable agreements.

Based on the above discussion, one can see that disciplines are standards which determine relations between the teacher and his superordinate, between the teacher and the government organization, and between the teacher and his colleagues, students, and students' parents. Disciplines are a determinant of effectiveness of the government organization. The government organization will become effective if both the teacher and the superordinate behave themselves accordingly to disciplines.

Currently, the enforcing of discipline encounters several problems: most teachers do not know/understand disciplines and disciplinary procedure; most superordinates pay little attention to disciplinary supervision and disciplinary procedure; and the disciplinary procedure is somewhat unsophisticated.

The lack of understanding of disciplines and disciplinary procedure of teachers creates several hardships on teachers. For instance, some teachers refuse to submit the sick-leave request in time in spite of being reminded to do so by the superordinate. They are therefore additionally disciplined on the grounds of insubordination. Some accused teachers offer bribes to the investigating committee hoping that such an offer will help to alleviate the severity of the punishment when in fact such a bribe cannot exempt the guilty person from the guilt. It should be noted that the determination of disciplinary cases is not based on bribes, good treats, or other personal factors. It relies on facts and evidence. The accused teacher should not be concerned on these matters. If the judgment is not done in good faith, the disciplined teacher may appeal to the senior superordinate or even launch a criminal case against the committee or the superordinate.

CHAPTER VII

THE LEGAL STATUS OF TEACHERS REGARDING SALARY, BENEFITS, AND LEAVES

Thai teachers are entitled to salary, benefits, and leaves as stated in the law. In this chapter, the writer addresses the legal status of teachers regarding salary, benefits, and leaves.

TEACHER'S SALARY

The TRA 1980 delineates the determination of salary schedule for teachers:

> Section 7: Power and responsibilities of the Teachers' Commission...
> (7) approve degrees, diplomas, or certificates of educational institutions and determine salary schedules for such degrees, diplomas, or certificates. In determining salary schedules, it is advised that the Commission consult the salary schedule devised by the Civil Service Commission.
> Section 24: The Civil Servant Salary Schedule is applied to teachers mutatis mutandis.
> Section 35: The teacher is entitled to the salary schedule determined for his position. In other cases, the determination of salary schedules of the teacher is bound to the Teachers' Commission's regulation concerning this matter.
> In the case where a teaching position is entitled to various salary schedules, the teacher who holds such a position shall be awarded a higher salary schedule whenever his salary reaches the minimum salary of that higher schedule.

According to these three sections, the salary of the beginning teacher is dependent upon his academic background. The beginning teacher who possesses higher academic qualifications is normally appointed to the higher position and thus to a higher salary level.

In order to get their graduates' qualifications approved by the Civil Service Commission, Thai teacher training institutions are required to present their programs to the Commission for prior approval. All additional programs must also receive prior approval. In most cases, the salary paid to individual graduates is dependent upon years of training. The program which requires a longer period of training normally results in a higher salary schedule. To date, the teacher who graduates with a degree, a diploma, or a certificate from a Thai educational institution is entitled to the starting salaries as presented in Table 3 (The Civil Service Commission Circular #SR.W 36/2518; #SR.W 39/2518; #SR.W 1/2519; #SR.W 2/2519; #SR.W 4/2519; #SR.W5/2519; #SR.W 6/2519; #SR.W 7/2519; #SR.W 14/2519; #SR.W 1/2520; #SR.W 13/2520; #SR.W 14/2520; #SR.W 17/2520; #SR.W 21/2520; and #SR.W 1/2521).

The teacher who graduates with a degree or diploma which requires the period of training as stated in Table 3 is entitled to a salary as depicted in the table. However, the conditions stated apply only to those who graduate from a Thai educational institution. The teacher who seeks a degree from a foreign institution which has never been approved by the Commission must submit a description of the academic program of such an institution to the commission

Table 3: Showing Relations Between Years of Training and Starting Salary/Month of Thai Teachers.

Years of Training After Grade X	Types of Degrees, Diplomas, or Certificates	Positions to be Appointed to	Salary (Baht*)
-	Lower High School Certificate	Teacher I, Class 1	1,470
2	Diploma in Teacher Education or Equivalent	Teacher I, Class 1	1,780
3	Occupational Certificate	Teacher I, Class 1	1,950
4	Senior Diploma in Teacher Education or Equivalent	Teacher I, Class 2	2,205
5	Senior Occupational Certificate	Teacher I, Class 2	2,485
6	Bachelor's Degree	Instructor I, Class 3	2,765
7	Graduate Diploma or Bachelor's Degree in Some Fields	Instructor I, Class 3	2,905
8	Master's Degree	Instructor I, Class 3	3,745
9	Master's Degree in Some Fields	Instructor I, Class 3	3,955
10	Doctorate Degree	Instructor I, Class 3	4,945

*18 baht = CDN $ 1

for approval prior to studying at the institution. Otherwise his degree shall be rejected by the Teachers' Commission.

In addition, the Royal Decree Concerning the Payment of Salary, Pension, and Other Similar Payments (1979) stipulates that the teacher will be paid according to his period of service (Section 10). The teacher who is absent from duties without acceptable reasons is not entitled to the salary for that period (Section 15).

According to the law, then, the teacher salary schedule is determined by the Civil Service Commission. The alteration of this salary schedule may be made only by such a Commission. No collective negotiation on this matter is allowed.

TEACHERS' FRINGE BENEFITS

Teachers' fringe benefits are divided into three categories: (1) the fringe benefit which is given to the teacher as part of his regular employment; (2) the fringe benefit which is given to the teacher who is assigned to perform extra duty; and (3) the fringe benefit which is given to the retiring or deceased teacher. In this study, the fringe benefit which is given as part of the employment is designated the "regular fringe benefit"; the fringe benefit which is given to the teacher who is assigned to perform extra duty is labelled as the "extra fringe benefit"; and the fringe benefit which is given to the retiring, resigned, or deceased teacher is considered as "pension".

Regular Fringe Benefits. The teacher who is appointed to a teaching position under the TRA 1980 is entitled to these regular fringe benefits: (1) special living aids, (2) housing allowance, (3) health care allowance, (4) children's tuition fees allowance, (5) children financial aids, (6) hardship allowance, (7) position allowance, and (8) special compensation. Qualifications of the teacher who is entitled to these benefits are discussed below.

1.SPECIAL LIVING AIDS

The teacher who possesses the following qualifications is entitled to the special living aid (Section 5 of the Royal Decree Concerning Government Official's Special Living Aids 1979):

> Section 5: The government employee who is entitled to special living aids:
> a. the government official or employee whose present salary is not higher than four thousand and eight hundred baht is entitled to special living aids of two hundred baht per month;
> b. the government official or employee whose present salary plus the special living aid as stated in (a) is not higher than one thousand nine hundred and thirty baht is entitled to another seventy baht per month.

Therefore the teacher whose present salary is not higher than 4,800 baht shall receive the special living aid of 200 baht per month whereas the teacher whose present salary is not higher than 1,730 baht shall receive an additional 70 baht per month. The special living aid comes with the monthly salary cheque.

The special living aid created some problems for the Gen.Kriangsak Chomanan government which first introduced this benefit in October, 1977. The government awarded the special living aid to all government officials or employees but not to elementary school teachers. This omission on the part of the government fomented elementary school teacher strikes through out the country during the month of January, 1978. The teachers demanded that the government pay special living aids to them as it had been paid to other groups of teachers and civil servants. As a consequence of the strike, elementary school teachers were awarded the special living aid.

2.HOUSING ALLOWANCE

Section 6 of the Royal Decree Concerning Government Official Housing Allowance 1979 states:

> Section 6: The government official or employee is entitled to government housing allowance except when:
> 1. such an official or employee is living in a government housing unit;
> 2. such an official or employee has never been transferred;
> 3. such an official or employee is transferred back to his original office without serving in another office longer than five years continually;
> 4. such an official or employee is terminated temporarily from the government service; and
> 5. such an official or employee is a non-tenured.

According to this law, the teacher who has never been transferred is not entitled to a housing allowance. In addition, the transferred teacher will not be entitled to the allowance if he is terminated temporarily due to disciplinary matters or is transferred back to his original school without serving at another school longer than five years continually. Further, the teacher who is living in a government housing unit is not entitled to claim for the allowance no matter the condition of the house. Mr. AS's case illustrates this provision.

> *Mr. AS was transferred from Nakonsritammarat to Pattani which was not his original school; therefore he was entitled to the allowance. The government paid him one hundred and fifty baht per month. In November, 1976, Mr. AS and his second wife and some children moved to a poorly conditioned government house located on the school grounds, leaving his first wife and some children in the rental house. He continued to claim the housing allowance. After the investigation, Mr. AS was issued a 10 per cent salary cutback for the period of four months (The Ministry of Education Order #ST 0802/5627 dated March 5, 1981).*

Since government housing is very limited, many school administrators experience difficulty in administering this kind of welfare. Many school administrators prefer to assign the teacher who is not entitled to a housing allowance to government housing. This is contrary to the Ministry of Finance Circular #KK.W50499/2492 dated December 8, 1949 which states:

> ...
> 1. The government official may stay in the house which is provided for him by the government.
> 2. If the housing provided by the government is insufficient, the official who is entitled to the housing allowance is given priority. In this case, the official who is not entitled to the allowance

should not stay in the government housing.

The provisions of this Circular are violated in most Departments attached to the Ministry of Education. The Ministry of Finance once asked the Director-General of a Department to take disciplinary action against a school administrator who violated the provisions of this circular but was refused by the Director-General. Along with his refusal, the Director-General contended "if school administrators are to be punished on these grounds, all school or college administrators throughout Thailand will be punished".

The allocation of housing allowance by the government encountered a severe problem. The government could not acquire sufficient funds for allocation to this purpose. The effective date of the law concerning the administration of housing allowance was adjourned twice (the first time in 1979 by the Royal Decree Concerning Government Official Housing Allowance 1979, and the second time in 1980 by the Office of the Prime Minister Circular #SR.W 0711/2523 dated August 26, 1980). To date, many eligible teachers are still prevented from claiming housing allowances. According to Amara Raksasat (1981:55), only 10 percent of eligible teachers are receiving housing allowances from the government.

3.HEALTH CARE ALLOWANCE

The Royal Decree Concerning Government Official Health Care Allowance (1980) defines 'health care allowance' and describes eligibility requirements of the teacher who is entitled to the allowance:

> Section 4: Definitions:
> ...
> Health Care Allowance includes the cost of treatment claimed by the clinic or the hospital. This cost refers to:
> 1. drugs, blood, blood components, liquid food, oxygen, and materials used for treatment purpose;
> 2. artificial organs and the cost of maintenance of the organs;
> 3. doctor's fees, excluding extra nurses hired specifically by the patient; and
> 4. room and board during the treatment period.
>
> ....
> Section 6: The following persons are entitled to claim for health care allowance for themselves and their family members under this royal decree:
> 1. the government official or employee who is receiving salary from funds allocated to the Ministry or the Department;
>
>   ....
> 2. the retired government official or employee who is receiving government pension.

The health care allowance is paid for the treatment of the teacher himself and his family members. However, to support the birth control policy implemented by the government, only the first three unmarried children whose ages are under twenty are entitled to the allowance (Section 4 of the above royal decree).

To limit the amount of claim, Section 11 of the Royal Decree Concerning Government Official Health Care Allowance 1980 adds:

Section 11: The health care allowance shall be paid under these conditions:

1. The person who received treatments from the government hospital shall claim for the actual cost of the treatment except:
   a. The cost of artificial organs and their maintenance has to be determined by the Ministry of Finance; and
   b. the cost of room and board has to be determined by the Ministry of Finance.

2. The person who receives treatments from a private hospital may claim the following:
   a. the cost of artificial organs, their maintenance, and room and board. This cost shall not exceed the amount of allowance which should be paid to him if he had received treatments from the government hospital; and
   b. only one half of the actual cost of other kinds of treatments received from a private hospital shall be claimed. This cost shall not exceed three thousand baht for the treatment of thirty days. If the treatment period is longer than thirty days, he shall claim for only one hundred baht per day.

The teacher or his family member who receives treatment from a government hospital may claim for the actual cost of the treatment except for the cost of artificial organs, their maintenance, and room and board, and the costs of which are to be determined by the Ministry of Finance. (Normally the cost of room and board determined by the Ministry of Finance is equal to the cost of the room and board charged by the government hospital). But those who receive treatment from a private hospital may claim for not more than one hundred baht per day for the cost of drugs, blood, blood components, liquid food, or oxygen. The claim for the cost of artificial organs, their maintenance, and room and board shall not exceed the amount allocated to the teacher who receives treatment from a government hospital.

To avoid delay in processing this type of claim and to prevent the fraudulent claim, the Ministry of Finance further regulates that the government hospital will receive the payment for the treatment of the teacher directly from the Department or the Ministry. The ailing teacher is required only to fill out the hospital form when receiving a treatment at the hospital (the Ministry of Finance's Regulation Concerning the Payment of Health Care Allowance 1977).

4.CHILDREN'S TUITION FEES ALLOWANCE

The teacher or the retired teacher is entitled to his children's tuition fees allowance (Section 5 of the Royal Decree Concerning Tuition Fees Allowance of Government Official's Children 1977). The tuition fees which are eligible include educational fees and private institution's fees. According to this royal decree, the educational fees and the private institution's fees refer to:

> Section 4: Definitions:
> ....
> (3)Educational fees refer to the fees that the educational institution charges its students under the authorization of the Ministry of Education, the State University Bureau, the Bangkok Metropolitan, the municipal, or other government agents.
> (4)The private institution's fees refer to the fees that the private educational institution charges its students under the authorization of the Ministry of Education or the State University Bureau.

The tuition fees that are eligible must be the amount of fees the teacher paid to the authorized institution for the education of his children. Since the government has a very limited budget, Section 7 of this royal decree sets further regulations concerning the awarding of children's tuition fees allowance:

> Section 7: Guidelines for the awarding of tuition fees allowance:
>
> 1. the government official may claim for actual tuition fees of his children who are studying in the government institution and in the program leading to no more than an undergraduate diploma. The amount claimed shall not exceed the amount determined by the Ministry of Finance;
> 2. the government official may claim for educational fees of his children who are studying in an authorized private institution and in the program up to and including the high school level. In this case, the amount claimed shall not exceed the amount determined by the Ministry of Finance; or
> 3. the government official may claim for one half of the actual tuition fees of his children who are studying in an authorized private institution and in the program leading to an undergraduate diploma. The amount claimed shall not exceed the amount determined by the Ministry of Finance.

Further, to support the birth control policy implemented by the government, Section 10 of this royal decree states "only the first three unmarried children whose ages are under twenty are entitled to the tuition fees allowance". The remaining child(ren) shall be entitled to the allowance if any or all of these first three children are deceased before the age of twenty.

In addition to tuition fees allowance, the teacher may borrow government funds to pay for educational expenditures of his children (Section 12 of the Royal Decree Concerning Tuition Fees Allowance of Government Official's Children

1977). The teacher who is interested in this benefit may request the form and details from Departments or Ministries for whom he works.

5.CHILDREN'S FINANCIAL AID

The teacher may claim for children financial aid under the Royal Decree Concerning Children's Financial Aid 1978. Under the Royal Decree, the teacher may claim for financial aid for his first three unmarried children whose ages are under eighteen (Section 5). The remaining child(ren) shall be entitled to this aid if any of the first three children are deceased before the age of eighteen. The child financial aid is worth fifty baht per month (Section 7), and is included with the salary cheque. Further, the adopted child is not covered by this law (Section 4).

6.HARDSHIP ALLOWANCE

The teacher who is teaching in a difficult and inhospitable area is entitled to a hardship allowance. According to Section 5 of the Royal Decree Concerning Hardship Allowance 1977, the hardship allowance is worth ten per cent of the teacher's salary but may not be less than two hundred baht. As areas are improved, the teacher may lose his right to the hardship allowance as the area is developed. The government occasionally replaces the list of inhospitable areas. The hardship allowance is included with the salary cheque.

7.POSITION ALLOWANCE

According to the Ministry of Education Regulation Concerning the Awarding of Position Allowance 1979, the teacher who possesses any of the following qualifications is entitled to a position allowance:

1. The teacher who is teaching in the school for the handicaped such as the blind, the deaf, the retarded, or the physically handicapped is entitled to a position allowance of four hundred baht per month.
2. The vocational teacher who received overseas training and is teaching in the vocational school which is run under the Vocational Education Development Project as proclaimed by the Ministry of Education is entitled to a position allowance of four hundred baht per month.
3. The southern teacher. The teacher who is teaching in a school located in any of these four southern provinces, i.e. Satoon, Pattani, Yala, and Naratiwat is entitled to a position allowance of fifty baht per month.
4. The Malay language teacher. The teacher who is teaching in a school located in any of these four southern provinces, i.e. Satoon, Pattani, Yala, and Naratiwat and has taken the Malay language course is entitled to a position allowance which may vary from fifty to one hundred baht per month depending upon the number of courses taken.

8.SPECIAL COMPENSATION

The teacher who serves in an insurgent area and is injured by insurgents shall be entitled to the special compensation as stated in the Royal Decree Concerning the Awarding of Special Compensation to Government Officials 1973. The amount of compensation is dependent upon the nature of the injury caused to the injured teacher, and is to be determined by the superordinate.

The eight types of fringe benefits mentioned are awarded to the qualified teacher as part of his employment. The teacher who is qualified for such benefits is, in most cases, entitled to them. There is one type of benefit, the housing allowance, which only some qualified teachers are receiving. Further, most recipients are teachers who are not teaching in elementary schools.

Extra Fringe Benefits. The teacher who is assigned to perform extra duties in addition to his regular teaching duties is entitled to extra fringe benefits. These include: (1) travel allowance, (2) overtime payment, (3) overtime teaching payment, (4) expert compensation, (5) committee meeting allowance, and (6) compensation to the member of the selection, the appointment, or the promotion examination committee. Details of each type of allowance follow.

1.TRAVEL ALLOWANCE

Section 8 of the Royal Decree Concerning Travel Allowance 1975 notes four types of travel allowance that can be claimed by teachers: (1) travel in which the teacher is ordered by his superordinate to perform his duties out of his school temporarily; (2) travel in which the teacher is ordered by his superordinate to hold a position at another school or office temporarily; (3) travel in which the teacher is ordered by his superordinate to hold a position at another school or office; and (4) travel back to his home town as a result of innocent suspension, temporary suspension, or death. The teacher who travels for any of the four reasons is entitled to these travel allowances (Section 9):

> Section 9: The travel allowance includes:
> 1. traveling fares and stipend;
> 2. rental expense;
> 3. moving expense of office equipment;
> 4. moving expense of personal belongings; and
> 5. some other necessary expenses.

The claim for any of these allowances is subject to Ministry of Finance regulations, which determine the amount of expense claimable by each class of teachers. For instance, only Class 7 teachers or higher may claim for the fare of the air conditioned express train. Or, only Class 5 or Class 6 teacher may claim for a rental expense which is not more than one hundred baht per night. In addition, the time period in which claims may be made is limited. The teacher who is ordered to take a position temporarily at another school may claim for the stipend and rental expenses within four months and one month respectively (Section 16).

In the case where the teacher is transferred to another school permanently, the teacher himself may claim for his own travel allowance and so shall his family members. According to Section 30 of the Royal Decree Concerning Travel Allowance 1975:

> Section 30: The family members include:
> 1. the spouse;
> 2. children;
> 3. parents;
> 4. parent(s) in law; and
> 5. mate(s) as specified in the List #3 attached.

Family members from Section 30(1) to (4) may claim at the same rate as the traveling teacher does (Section 31). But the mate(s) shall claim for the lowest rate as listed in the List #1 and #2 attached to the Royal Decree (Section 32). The teacher shall claim for the actual cost of the moving of his personal belongings but not more than the amount listed in List #5 attached to the royal decree (Section 33). The claimant is required to present the actual bill of moving expenses to his superordinate to be entitled to the moving allowance. The presentation of the false bill shall lead to charges of fraud and dismissal. Mr. Y's case (already cited in another connection also) is a good example of this provision.

> *Mr. Y received a transfer order directing him to serve in Nakonpanom. Along with his family members, Mr. Y took the bus from Chiangmai to Bangkok and then from Bangkok to Nakonpanom. All his personal belongings accompanied him in the bus. Mr. Y realized that he had the right to claim for moving expenses. He purchased a forged bill from his friend who owned a*

> *grocery store in Udontanee and used the bill to support his claim. The Department paid him the amount claimed. Unluckily, Mr. Y's fraud was detected by the government finance inspector. He therefore was forced to returned the allowance and was terminated from the school (The Department of General Education Order #1665/2524 dated August 25,1981).*[25]

Travel allowances create much dissatisfaction among teachers. In particular, elementary school teachers currently may not claim for travel allowances even though by law they are entitled to it. The elementary school teacher who is ordered to attend a conference or seminar is required to pay for his own expense while teachers of other Departments receive the allowance. Compared with other categories of government employees, a very low percentage of teachers receive the allowance although they are ordered to hold positions temporarily or permanently at another school. In short, the legal right of teachers regarding travel allowances is not being met.

2.OVERTIME PAYMENT

The teacher who is ordered to work overtime shall be paid at the following rate (the Ministry of Finance Regulation Concerning Government Official's Overtime Payment 1975):

1. Overtime payment to the teacher who is ordered to work overtime on weekdays or holidays for a period not less than three hours.

   a. The teacher whose salary is 1,905 baht per month or more shall receive twenty five baht for each overtime period.

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[25] He was lucky enough that he was not jailed.

b. The teacher whose salary is lower than 1,905 baht per month shall receive twenty baht for each overtime period.

2. Overtime payment to the teacher who is ordered to work on holidays.

   a. The teacher whose salary is 1,905 baht per month or more shall receive thirty-five baht per day.

   b. The teacher whose salary is lower than 1,905 baht shall receive thirty baht per day.

The overtime which is entitled for payment is specified in an order issued by the Director-General or equivalent position only. In practice, the Director-General rarely orders teachers to work overtime.

3.OVERTIME-TEACHING PAYMENT

The overtime teaching payment is paid to the teacher who is ordered to teach outside regular hours. For instance, the teacher who is ordered to teach evening classes or weekend classes is entitled to the overtime teaching payment which ranges from forty to one hundred baht per hour. The current rate is forty baht per hour for the secondary school level, fifty baht per hour for the diploma level, seventy five baht per hour for the undergaduate level, and one hundred baht per hour for the graduate level (the Ministry of Finance Regulation Concerning the Overtime

Teaching Payment Rate 1979).

4.EXPERT COMPENSATION

The teacher who is invited to lecture at another school is entitled to expert compensation. In this case, the host school is required to provide the compensation through its allocated budget. The current compensation rate is fifty baht per hour (the Ministry of Finance Regulation Concerning Compensation to the Expert 1977). If the expert is to pay for his travel and rent, he may claim for these from the host school at the rate specified in the Royal Decree Concerning Travel Allowance 1975.

5.COMMITTEE MEETING ALLOWANCE

The teacher who is appointed or elected to an eligible committee is entitled to the committee meeting allowance when he attends meetings. The committees whose members qualify for this benefit are: the Committee on National Elementary Education, the Committee on Provincial Elementary Education, the Teachers' Commission, the Teacher Education Council, the Teachers' College Council, and other similar committees or councils. The current committee meeting allowances range from one hundred fifty to two hundred baht per meeting (the Royal Decree Concerning Committee Meeting Allowance 1980).

6.COMPENSATION TO MEMBERS OF THE SELECTION, APPOINTMENT, OR PROMOTION EXAMINATION COMMITTEE

The teacher who is appointed to any of these committees shall be entitled to the compensation paid for such membership. The rate of compensation varies from four to seven baht per applicant per academic subject (the Ministry of Finance Regulation Concerning Compensation to the Selection, the Appointment, or the Promotion Committee 1975).

The extra fringe benefit is paid to the teacher who is ordered to perform extra duties in addition to regular duties. Some types of benefits (e.g., the overtime teaching payment, the expert compensation, and the compensation to the member of the selection, appointment, or promotion examination committee) are paid from a fund created by students' or applicants' fees. The government is not responsible for the allocation of fund for these purposes. Only the travel allowance, the overtime payment, and the committee meeting allowance are supported by the government.

To date, the allocation of budget for travel allowance is discriminatory. Many eligible elementary school teachers are prohibited from claiming travel allowances. The legal status of elementary school teachers regarding this matter is ignored by the administration.

Teachers' Pension. The teacher who has served in schools for some certain period is entitled to a government pension. According to the Government Official Pension Act 1951, the teacher is entitled to any or some of the following: (1) regular pension, (2) special pension, (3) funeral aid, and (4) transferred pension.

1. THE REGULAR PENSION

The regualar pension consists of: (1) the lump sum pension and (2) the long range pension. The lump sum pension is paid to the retired teacher on his retirement date. The teacher who receives the lump sum pension will then have no further legal claim on the government. He will no longer be entitled to the other kinds of regular or extra fringe benefits.

The long range pension is paid to the retired teacher monthly. The teacher who is receiving a long range pension is entitled to some kinds of regular fringe benefits (e.g., health care allowance and children's tuition fees allowance). In addition, the retired teacher who is receiving a long range pension is entitled to funeral aid and transferred pension. Qualifications and payment procedures with respect to pension recipients are presented below.

According to Section 9 of the Government Official Pension Act 1951, the teacher who retires from teaching for any of these reasons is entitled to the regular pension: (1)

termination without guilt, (2) illness, (3) old age, and (4) long term service. Termination without guilt refers to termination due to the abolishment of the position or termination under any other reason which is not a "put out of service" or a "dismissal" (Section 11). The teacher who suffers long term sickness or has become incapacitated shall be terminated with a regular pension (Section 12). The teacher who reaches sixty years of age or not less than fifty years, but wishes to retire may be terminated due to old age (Section 13). The teacher who has taught for a period not less than twenty five years may request a resignation with regular pension (Section 14). If the teacher cannot cite any of these reasons, the regular pension will not be paid. Further, Sections 15 and 16 of this act state:

> Section 15: The government official who has served for a period less than ten years is entitled to a lump sum pension.
> The government official who has served for a period not less than ten years is entitled to the long range pension.
>
> Section 16: The government official who is entitled to the long range pension may choose the lump sum pension.

Therefore in order to qualify for a long range pension the teacher must have taught for a period not less than ten years. Otherwise he is entitled only to the lump sum pension. In addition, Tanti-sook _et al._(1980:46) note that the teacher who expects the regular pension following his resignation must have served in the school for a period of not less than five years. In other cases, the teacher must be terminated under any of the four reasons mentioned earlier in order to qualify.

Calculation the regular pension occurs as follows (Sections 31 and 32 of the Government Official Pension Act 1951):

> Section 31: The regular pension is based on the final salary. But the regular pension of the retiring government official is based on the final salary after the final salary promotion.
>
> Section 32: Calculation procedures:
> 1. The lump sum pension is a multiplication of the final salary and years of service;
> 2. The long range pension is a multiplication of the final salary and
>   a. years of service after being divided by fifty for police and military persons;
>   b. years of service after being divided by fifty for government officials who served in the office for the period not less than twenty five years;
>   c. years of service after being divided by fifty five for those who are not included in (a) and (b).

According to these two provisions, the final salary and years of service are the determinants of the regular pension. In calculating years of service, Section 29 of this act stipulates that a fraction of a year which is not less than six months is calculated as one year. In addition, Sections 25 and 27 further state that any kind of leave with full pay counts as years of service. The teacher who has taught in the area under the martial law shall get a double term of service (Section 24).

The regular pension is given to the teacher as a gratuity for his good service in the past. If it is found that the pension recipient later misbehaves himself, he shall lose his right to the long range pension (Section 52). The offence which leads to imprisonment or a declaration of bankruptcy on behalf of the pensioner by the court shall lead to the nullification of the regular pension.

2.THE SPECIAL PENSION

The teacher who is injured or handicapped while on duty is entitled to a special pension in addition to the regular pension. With regard to this matter, Section 37 of the Government Official Pension Act 1951 states:

> Section 37:The government official, the military person, or the person who is assigned to perform some specific duties by the Ministry of Defence, if being injured or handicapped and thus incapable of performing his regular duties, is entitled to a special pension in addition to regular pension. This provision does not cover those whose injury or disability is caused by their own negligence or carelessness.

Therefore the teacher who is appointed to teach in a vulnerable area and is injured or handicapped by terrorists is entitled to this special pension. In addition, Section 40 of this act provides that the teacher who is entitled to special pension is consequently entitled to the long range pension even though his duration of service is less than ten years.

3.FUNERAL AID

Funeral aid is paid to the relative of the deceased teacher or pensioner. It is provided to aid relatives in organizing the funeral. With regard to this matter, Sections 22 and 38 of the Royal Decree Concerning the Payment of Salary, Pension, and Other Similar Payment 1979 state:

> Section 22: The government official who passes away during his term of service is entitled to funeral aid which is worth three times his monthly salary on the date of death. The term 'salary' in the previous statement does not include one's position allowance or any other allowance.
>
> This provision is also applied to the appellant and those who are terminated temporarily if it is later proved that this official is innocent.
>
> Section 38: The deceased pensioner is entitled to funeral aid which is worth his one month pension. This provision is not applied to the recipient of the transferred pension.

In claiming for both types of funeral aid, the relative of the deceased teacher or pensioner must present his claim to the primary superordinate of the deceased teacher within one year (Section 24). The eligible relative is defined as follows (Section 23):

> Section 23: Funeral aid shall be paid to the heir of the deceased official. If there is no will, one of the following shall be entitled to the aid:
> 1. the spouse,
> 2. the children,
> 3. the parent,
> 4. the patron; or
> 5. other dependent.
>
> If the preceding relative is alive, the right of funeral aid to the next relative is nullified.

In addition, the relative of the deceased teacher who dies while serving temporarily at another school may claim for travel allowance on behalf of the deceased teacher in moving the body and belongings back to the home town. With regard to this matter, Section 40 of the Royal Decree Concerning Travel Allowance 1975 states:

> Section 40: The relative of the deceased official who died while serving another position temporarily shall claim for travel allowance on behalf of the deceased official. This allowance includes: rent, transport, and the cost of moving personal belongings back to the home town of the deceased official. If the death was caused by the misbehaving of the official, the relative shall claim at the lowest rate.
>
> The claim under this provision shall be made within ninety days following the death.

4. THE TRANSFERRED PENSION

The transferred pension is the gratuity paid to the relative of the deceased teacher or of the pensioner. The relative who is entitled to the transferred pension shall be (Section 44 of the Government Official Pension Act 1951):

> Section 44: Relatives who are entitled to the transferred pension:
>
> 1. child(ren) is entitled to two fractions of the total pension. If the deceased official has more than three children, they are entitled to three fractions of the total pension;
> 2. the spouse is entitled to one fraction of the total pension; and
> 3. the parents, the father, or the mother, if alive, are entitled to one fraction of the total pension.
>
> If the deceased official does not have any of the relatives mentioned, the transferred pension shall be divided equally among the remaining relatives.
>
> If none of the above relative are alive, the transferred pension shall be paid to the person who identifies himself to the superordinate of the deceased

> official as the guardian or the dependent of the deceased official. The amount of the transferred pension paid to the guardian or the dependent is to be determined by the Ministry.

According to this provision, three groups of relatives who are entitled to the transferred pension are the children, the spouse, and the parent. If the deceased teacher has two children, his children are entitled to one half of the pension. If he has three children or more, his children are entitled to three fifths of the total pension.

In calculating the transferred pension, Section 48 and 49 of the Government Official Pension Act 1951 state:

> Section 48: If any of the following: the official, the government employee, or the person who is receiving soldier's pension dies during the term of service and the death is not caused by his own misbehaving, his relatives under Section 44 are entitled to the transferred pension which shall be calculated under the provision of Section 31(1). The child(ren) who is already twenty on the deceased date shall not be entitled to the transferred pension except that the child(ren) is not older than twenty six and that he is studying in the postsecondary institution. This excludes the handicapped child(ren).
>
> Section 49: If the pensioner dies, the relatives under the provision of Section 44 are entitled to the transferred pension. The transferred pension under this provision shall be thirty times the amount of the monthly pension. The child(ren) who is already twenty on the death shall not be entitled to the transferred pension except that the child(ren) is not older than twenty six and that he is studying in the postsecondary institution. This excludes the handicapped child(ren).

Therefore the transferred pension of the deceased teacher is equal to the multiplication of years of service and the final salary prior to the death (Section 32(1) of the Government Official Pension Act 1951). Whereas the transferred pension for the deceased pensioner is thirty times the amount of the monthly pension. In the latter case, the transferred pension shall not be less than three thousand baht (Section 50).

The teacher pension is a gratuity provided by the government to all eligible teachers or relatives. In order to get any of four types of pension, the teacher or the relative is required to present his claim to the primary superordinate. The primary superordinate then presents the claim to senior superordinates up to the Educational Minister. After being verified by the Minister, the claim then goes to the Ministry of Finance. The Ministry of Finance normally takes about sixty days to process the claim (Section 51). The teacher or the relative who wishes to receive it earlier shall find his own means to speed up the processing of the claim.

TEACHER'S LEAVES

The Ministry of Education Regulation Concerning Leaves of Teachers (1978) divides leaves with full pay into seven categories: (1) sick leave, (2) maternity leave, (3) leave due to personal business, (4) religious leave, (5) military leave, (6) study, training, observation, or sabbatical leave, and (7) foreign visit leave. Details of each category follow.

Sick Leave. Section 26 of the Royal Decree concerning the Payment of Salary, Pension, and other Similar Payment 1979 stipulates the duration of sick leave with full pay.

> Section 26: The government official may take leave with full-pay for period of not longer than sixty days per year. Where appropiate, the Director-General of the Department shall use his discretionary power to award a renewal, but the renewal period shall not be longer than sixty days.

According to this provision, the teacher may request sick leave with full-pay for a period not longer than one hundred and twenty days per year. In order to set guidelines for practice, the Ministry of Education enacted the Ministry of Education Regulation Concerning Leaves of Officials of the Ministry 1978 which states:

> Clause 12: The official or employee who wishes to request a sick leave shall present his request to the primary superordinate prior to or on the beginning date of leave. Where necessary, he shall present his request on the first day back at work.
>
> If the official or employee does not sign the request himself, he may ask someone else to sign the request on his behalf.
>
> Clause 13: The superordinates listed on the list attached have authority to grant different durations of leaves to the officials or employees.
>
> The official or employee who requests the sick leave which is longer than thirty days is required to present the medical statement to support his request.
>
> If there is some suspicion, the superordinate shall ask the licensed physician to support the request which is less than thirty days from the claimant. Or if appropriate, the superordinate shall order the claimant to submit to an examination by the government's official physician.

The requesting of sick leave is more flexible than other categories of leaves. The teacher may submit his request at any reasonable time. If the teacher is demonstrably ill, the superordinate, within his jurisdiction, is required to award the sick leave to the teacher. When suspicions develop, the superordinate may arrange a visit or ask the claimant to present a physician's statement to support the claim. Refusal to present the physician's statement when requested by the superordinate shall lead to disciplinary action. Miss N's case is a good example.

> *On Friday of May 30, 1980, Miss N requested a one-day sick leave. Her request was granted. On Monday of June 2, 1980, Miss N requested another three-day sick leave, saying that she was still ill. This time she asked the school janitor to present her request to the principal for her. The janitor put Miss N's request on the school secretary's desk, and the request later disappeared. On Thursday of June 5, 1980, Miss N requested another two-day sick leave by entrusting her statement with her brother (a student at the school) and asking him to present her request to the principal. (Miss N had been granted many sick leaves in the preceding year and was not awarded an increment). This time the principal was suspicious about the request and asked Miss N to present a physician's statement to support her claim. Miss N could not present such a statement to the principal. On Monday of June 9, 1980, Miss N requested another five-day sick leave, saying that she was still ill and entrusting the statement with another student of the school. The request made the principal even more suspicious. On Monday of June 16, 1980, Miss N came to school and was told to present a physician's statement to support her request. Otherwise her requests would be refused. In addition, her requests covered two weekends (May 31 to June 1, and June 7-8, 1980) which were to be considered as part of her leaves (Clause 8). Miss N was therefore asked to produce a single request which covered May 30, 1980 to June 13, 1980. Miss N produced the new request on June 23, 1980 but could not present a physician's statement to support her request. She was finally issued a probation (The Ministry of*

Education Order #SP2024/2524 dated August 13, 1981).

Maternity Leave. Section 27 of the Royal Decree Concerning the Payment of Salary, Pension, and Other Similar Payment 1979 states:

> Section 27: The official shall be granted maternity leave with full pay for the period not longer than sixty days per year.

In requesting a maternity leave, the female teacher is required to obey clause 14 of the Ministry of Education Concerning Leaves of Officials of the Ministry 1978 which states:

> Clause 14: The official who wishes to request maternity leave may present her request to the primary superordinate prior to or on the beginning date of her leave. If the official cannot sign the request herself, she may ask someone else to sign it on her behalf. But she is required to produce the official request when she is able to do so. The superordinates listed on the list attached have authority to grant different durations of maternity leave to the official.
>
> The request for maternity leave longer than thirty days must be accompanied by a licensed physician's statement.

According to the above provision the teacher may receive maternity leave with full pay for a period up to sixty days. The request for maternity leave must be presented to the primary superordinate and then to the authorized superordinate. The maternity leave does not affect the yearly increment of the teacher.

Leave Due to Personal Business. With regard to the leave due to personal business, Section 28 of the Royal Decree Concerning the Payment of Salary, Pension, and Other Similar Payment 1979 states:

> Section 28: The official may be granted a leave due to personal business including the foreign visit leave with full pay for a period not longer than forty five days per year. But in the first year of employment, the official may be granted the leave due to personal business with full pay for a period not longer than fifteen days per year.

To qualify for a personal leave, the claimant must present his request to the primary superordinate prior to the requested date (Clause 15 of the Ministry of Education Regulation Concerning the Leaves of Officials of the Ministry 1978). The teacher must not be absent without the prior granting of leave by the superordinate. In an emergency, the teacher may be absent without receiving prior approval but he is required to produce acceptable explanations and present them to the superordinate upon his return.

Many beginning teachers misunderstand the procedure regarding leave due to personal business. Many are absent from work without receiving permission from the principal. Mr. AI's case should illustrate the situation.

> *Mr. AI submitted his request on August 22, 1978 for a leave due to personal business for three days. In the request, Mr. AI stated that he had to escort his friend who was transferred to another province. After submitting the request to the principal's secretary, he escorted his friend to Trang that same evening without waiting for permission from the principal. The principal reviewed the request and found that the reason cited was unacceptable and then refused the request. At the investigation, Mr. AI was found guilty of violating Sections 74 and 75 of the Civil Service Regulation Act 1975. He was issued a ten per cent salary cutback for the period of three months (The Province of Chumpon Order #1103/2521 dated December 11, 1978).*

In addition, it should be noted that a leave due to personal business may be terminated by the superordinate. Where necessary, the principal may call the teacher who is on the leave due to personal business back to work. Disobedience to the principal's call can be considered an insubordination which is a disciplinary violation.

Religious Leave. The teacher who has never served as a Buddhist monk or never attended an Isalamic religious ceremony in Saudi Arabia may request a religious leave. With regard to this matter, Section 29 of the Royal Decree Concerning the Payment of Salary, Pension, and Other Similar Payment 1979 notes:

> Section 29: The authorized superordinate may grant a religious leave with full pay for the period of not more than one hundred and twenty days to the official who has never served as a Buddhist monk or never attended an Isalamic religious ceremony in Saudi Arabia. In his first year of employment, the official shall not be granted the religious leave.

Serving as a Buddhist monk or attending the Islamic religious ceremony in Saudi Arabia mentioned in this provision includes such activities prior to entering the teaching profession. The teacher who has already served as a monk or already attended the ceremony shall not be granted the religious leave with pay.

In practice, the teacher who wishes to request religious leave must submit his request to the primary superordinate prior to the beginning date of leave not less than sixty days (Clause 19 of the Ministry of Education

Concerning Leaves of Official of the Ministry 1978). The primary superordinate is required to present the request to senior superordinates up to the Permanent Secretary. After being recommended by the Permanent Secretary, the claimant will be royally granted the permission.

Military Leave. The teacher who is called by the military to attend a military practice is entitled to leave with full pay during the exercise (Section 30 of the Royal Decree Concerning the Payment of Salary, Pension, and Other Similar Payment 1979). The teacher who is called for such a purpose is required only to notify his superordinate before leaving for the exercise (Clause 18 of the Ministry of Education Concerning Leaves of Official of the Ministry 1978). After completing the exercise, the teacher is required to return to work within seven days.

Study, Training, or Observation Leave. There are two different practices concerning study, training,and observation leave: (1) study, training, or observation leave within the country and (2) study, training, or observation leave in a foreign country.

1. Study, Training, and Observation Leave Within the Country. The teacher may be granted a study leave if (1) he is admitted to a program which leads to an advanced degree or diploma, (2) he has served in the school for a period not less than twenty-four months (for those who serve in a school outside of Bangkok) and thirty-six months (for those who serve in a school within Bangkok), and (3) he is not older than forty five[26] (Clause 3 of the Ministry of Education Regulation Concerning Study Leaves Within the Country 1974). The regulation does not specifically dictate the duration of study leave with full pay. However, the Cabinet Circular #SR0403/W92 dated November 7, 1969 states that "the authorized superordinate has discretionary power to determine the duration of study leave with full pay within the country for his subordinates."

With regard to training or observation within the country, there is no regulation concerning the procedure for obtaining the training or observation leave. The teacher who wishes to receive such training or to observe any academic activities may request his superordinate to order him to attend. In this case, the training or observation is then considered as the teacher's extra duties and he is thus entitled to the extra fringe benefit.

2. **Study, Training, or Observation Leave in a Foreign Country.** Clause 11 of the Cabinet Regulation Concerning Study, Training, and Observation Leave in the Foreign Country 1969 states the qualifications of the government official or employee who may request such a leave: (1) must not be older than thirty five if he plans to study for a

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[26] The Permanent Secretary may grant a study leave to the teacher who is older than forty five

bachelor's degree or not older than forty[27] if he plans to study for a graduate degree; (2) he must have served in the office for a period not less than one year; (3) he must have a good knowledge of the foreign language to be used in the study; (4)he must be a healthy person; and (5) the discipline that he plans to study must be needed by the Department or the Ministry. The regulation does not state details about the duration of leave. However, the Civil Service Commission Circular #SR0712/W5 dated Marched 24, 1978 stipulates:

a. The superordinate together with the Civil Service Commission may grant a study leave with full pay to the official who holds a Master's degree from a Thai institute to do a Doctorate degree in a foreign country for a period not longer than five years.
b. The superordinate together with the Civil Service Commission may grant a study leave with full pay to the official who holds a Master's degree from a foreign institute to do a Doctorate degree in the foreign country for a period not longer than four years.
c. The superordinate together with the Civil Service Commission may grant a study leave with full pay to the official who holds a Bachelor's degree from a Thai institute or an overseas institute to do a doctorate degree in an overseas country for a period not longer than six years.

Beyond this time limit, the teacher may not be granted a renewal.

With regard to training and observation leave, the regulation authorizes the Permanent Secretary and the Civil

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[27] The Civil Service Commission may grant an overseas study leave to the teacher who is older than thirty five or forty.

Service Commission to use discretionary power to grant training or observation leave to the teacher who wishes to receive an overseas training or observation. Therefore a change in the educational status of the applicant may result in a change in the guidelines for practice.

Overseas Visiting Leave. Cabinet Circular #SR0712/W18 dated August 28, 1981 states the duration of an overseas visiting leave with full pay as the following: (1) not longer than forty five days for a visit to a neighboring country; (2) not longer than fifty days for a visit to other Asian countries; and (3) not longer than fifty-five days for a visit to other countries which are not included in (1) and (2). The overseas visiting leave is considered as part of the leave due to personal business. Therefore the teacher whose overseas visiting leave when incorporated with sick leave and personal business leave is longer than forty-five days will not be entitled to a yearly increment.

Among these seven categories of leave, sick leave, leave due to personal business, and study leave are the three categories which create the most problems and dissatisfaction among teachers. The law says that the teacher is entitled to leave due to personal business with full pay for a period not longer than forty-five days per year, but this does not mean that all requests for personal leave will be granted. The authorized superordinate normally looks into reasons cited in the request and then grants or refuses to grant the leave. Although it might not be true in all cases, most teachers try to develop a close connection with their superordinate so that the request for personal leave or sick leave may be granted with ease.

Concerning study leave, the law may specify the duration of study leave and the qualifications of the teacher who is entitled to the leave. The granting of study leave is highly dependent on the discretionary power of the superordinate. The superordinate has the power to determine which discipline is useful to the present position of the claimant and then makes his decision. The introduction of a committee to deal with this matter would be acceptable to most teachers.

SUMMARY

In this chapter, questions related to the legal status of Thai teachers were addressed. In particular, the discussion centered on salary, fringe benefits, and leaves of Thai teachers. The Teachers' Commission has authority to determine salary schedules of Thai teachers, but its decisions must be in accord with the civil servant salary schedule. According to the law, the salary of individual teachers is based on years of schooling, and teachers who possess similar academic qualifications will receive similar beginning salaries.

With regard to fringe benefits, teacher fringe benefits are divided into three categories: (1) regular fringe benefits, (2) extra fringe benefits, and (3) teacher pensions. The regular fringe benefits are by law awarded to all qualified teachers. These fringe benefits include: special living aids, housing allowances, health care allowances, children's tuition fees allowances, children financial aids, hardship allowances, position allowances, and special compensation. Extra fringe benefits are given to the teacher who is ordered to perform extra duties in addition to his regular duties. These include: travel allowances, overtime payments, overtime teaching payments, expert compensation, committee meeting allowances, and compensation to the selection, appointment, or promotion examination committee. The teachers' pension is a benefit given to the teacher who has served faithfully until his retirement, resignment, or death. The teachers' pension is in the form of regular pension, special pension, funeral aid, and transferred pension.

Currently, the payment of fringe benefits to teachers is subject to both the law and the availability of funds. The qualified teacher may receive the fringe benefit if there are sufficient funds available. Conversely, if limited funds are allocated, the superordinate employs his discretionary power to allocate this limited fund among his subordinates. The use of discretionary power of the superordinate is legal. In addition, since the allocation of government fund has to be legislated annually, the alteration or adjustment of the fringe benefits of teachers must be legislated. In other words, the demand for more fringe benefits by teachers may be pursued only through the parliament.

In addition to fringe benefits, teachers are also entitled to leaves with full pay. These benefits include: the sick leave, the maternity leave, the leave due to personal business, the religious leave, the military leave, the study, training, or observation leave, and the foreign visit leave. In the past, the teacher who obeyed the regulations was granted the leave requested. However, many problems regarding leaves of teachers arose. Many teachers were reluctant to follow the leave regulations. Some did not have important personal business but requested leaves for personal business. Some were not actually sick but requested sick leave. Some were actually sick but were reluctant to notify their superordinate. Others refused to go back to work even though they knew that their study leaves were already expired. A review of disciplinary cases and the law concerning this matter leads to the development of some general hypotheses or assumptions as follow: (1) Thai teachers do not know or understand the laws or regulations; (2) teachers understand and know the law and know that they are violating the law but believe that the superordinate will not take disciplinary actions against them since many others who violate similar law are not disciplined; (3) teachers understand and know the law and know that they are violating the law but believe that their patron could protect them; or (4) teachers know and understand the law and know that they are violating the law but they believe they can influence decisons of the superordinate. The poor understanding of or the reluctance to accept the educational laws could jeopadize the teaching profession. Many Thai teachers believe that nobody can harm them if they have a powerful patron.

CHAPTER VIII

THE LEGAL STATUS OF TEACHERS REGARDING PUPILS, ACADEMIC FREEDOM, AND CIVIL RIGHTS

In this chapter are discussed three major topics: (1) the legal status of teachers regarding pupils; (2) the legal status of teachers regarding academic freedom; and (3) the legal status of teachers regarding political and civil rights.

THE LEGAL STATUS OF TEACHERS REGARDING PUPILS

There are two types of legal provision regarding teachers and pupils. First, the teacher is required to be liable for his pupils as stated in the Thai Civil and Commercial Code. Second, the teacher is required to teach and discipline pupils according to the Teaching Position Standards devised by the Teachers' Commission.

The Teacher Liability in Respect of Pupils. The Thai Civil and Commercial Code outlines the legal position of the teacher vis a' vis his pupils:

> Section 76: An organization is bound to make compensation for any damage done to other persons by its members or other representatives in the exercise of their functions, saving its right of recourse against the causers of the damage.
>
> If damage is done to other persons by an act which is not within the scope of the object of the organization, those members or managers who voted in favor of such act, and those managers and other representatives who executed it, are jointly liable to make compensation.
>
> Section 420: A person who, wilfully or negligently,

> unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit an offending act and is bound to make compensation therefor.
>
> Section 430: A teacher, employer or other person who undertakes the supervision of an incapacitated person either permanently or temporarily, is jointly liable with such person for any offending act committed by the latter whilst under his supervision, provided that it can be proved that he has not exercised proper care.

Therefore if the school or the teacher, or both, cause damage or injuries to the pupil, the school or the teacher or both are required to be liable for the damage or injuries. Especially, if damage or injuries are caused directly by the teacher, the teacher himself is required to pay for the injuries or damage. But if the damage is not caused directly by the teacher, he will be required to pay for the damage only it is proved that the teacher is negligent to his duties or that he has not provided proper care to his pupils. In other words, the teacher will be innocent if it can be proved that the teacher has already exercised proper care to the pupil. These following court cases are provided to illustrate the above provisions.

> **The Surin Provincial Court Ruling.** *Somneok Songklaa vs Surapin-pidhaya School. Somneok claimed for a payment due to an injury caused to his son Sanook. In his claim, he explained that on September 3, 1979, between 10:20-12:05 am., Sanook and his friends attended a chemical laboratory class and participated in an experiment. After the experiment, Chamnan Charat, the teacher, told some students to put experimental equipment and chemical solutions back in the cabinet and Chamnan himself supervised another group of students in cleaning experimental equipment. Unfortunately, Nalerk Banyen, who was supposed to help his friends put the solution back in the cabinet, used*

> *a siphon to suck chemical solution from a beaker nearby then blew it into Sanook's left eye without knowing that it was a chemical solution. Sanook was blinded in his left eye. Somneok claimed that the Surapin-pidhaya school, Chamnan Charat, and Nalerk Banyen were responsible for the injury. After reviewing the case, the court ruled that only Chamnan and Nalerk were to be responsible for this injury (cited in Songchai Saihong et al., 1981:12).*

> **The Thai Supreme Court Ruling #356/1968.** *Chai Banmoo vs Mean Songklo-huang, Chin Songklo-huang, and Chom Chang-to. Chai explained that on February 22, 1963, his son Suwit went to school, and Chom was the only teacher who came to school on that day (two others were absent). Prior to the school hour, Chom observed that a few pupils brought* **Mai Plu**[28] *to school. He realized that Mai Plu could injure someone and thus collected all Mai Plu from the pupils. That morning he taught Arithmetic to Grade 3 pupils and then wrote some arithmetic problems as an assignment on the board. Before leaving for another class, Chom told the Grade 3 pupils to finish their assignment in the class. Instead of working on the assignment, Chin Songklo-huang and friends left the class to make Mai Plu and came back to school before lunch time. Suwit, standing close to the window, saw that Chin and friends were bringing in new Mai Plu. Suwit looked through the open window to talk to Chin. Chin blew a leaf ball into his left eye which was eventually blinded. The incident was reported to Chom and Chom punished Chin. The injury caused to Suwit's eye was beyond Chom's power. After reviewing the case, Judges of the Thai Supreme Court ruled that Chin and his mother were to pay damages of 11,500 bahts to Suwit. Chom, the teacher, who had exercised proper supervision of his pupils, was exonerated, however.*

From these two cases, we may conclude that the teacher is liable and responsible for damages or injuries which occur to his pupils during school hours[29]

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[28] Mai Plu is a hollow stick used with a wooden cylinder to blow a paper or leaf ball. It is made of a kind of bamboo tree and is normally about 20 centimeters long and 1 centimeter in diameter.

[29] The kindergarten and elementary schools run for 30 hours a week while secondary schools or colleges run for 35 hours a week (the Ministry of Education Promulgation Concerning the

[29] unless he can prove that proper care is provided. Outside school hours, he is not required to be liable or responsible for such injuries.

Teacher Authority with Respect to Pupils. As mentioned earlier, the teacher has authority to maintain good conduct and to correct misconduct of pupils. In dealing with pupil behaviors, the teacher may use both rewards and punishments.

With regard to the question of rewarding pupils, no law or regulation on this matter exists. The teacher is advised to use his discretion in rewarding his pupils. A review of the practices of Thai teachers in rewarding good conduct by pupils indicates common preferences. Thai teachers reward good behavior with praise, friendliness, responsibility, and occasionally gifts. For instance, as a reward, pupils may be asked to do some cooking for the teacher at home, to do laundry for the teacher, or to buy cigarette for the teacher. Even worse, some well-behaved pupils may be asked to massage the teacher during the lunch time period. Occasionally, what a teacher may require of pupils is viewed by other teachers as something else. If the society feels that such a reward should not be given to a particular pupil, the teacher is advised not to award that reward. It should be noted that the exercise of discretionary power in this way by the teacher when it flouts societal norms, may result in disciplinary action.

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[29] (cont'd)Office Hour of School and College Attached to the Ministry 1977)

Conversely, the Ministry of Education has devised ministerial regulations setting guidelines for the punishment of pupils. Clause 4 of the Ministry of Education Regulations Concerning the Punishment of Pupils and Students 1972 stipulates the person who is authorized to punish the pupil and outlines the levels of punishment:

> Clause 4: Head of the educational institution has discretionary power to punish the pupil or student at any of the following levels:
> a. reprimand;
> b. flogging;
> c. probation;
> d. temporary termination;
> e. termination; and
> f. wiping out pupil's name from the school list.

According to this regulation, only the head of the institution (e.g. the Teacher Head, the Principal, the School Director, or the College Rector) has authority to punish the pupil. If not delegated, the teacher himself has no authority to punish the pupil. In addition, Clause 6 of the regulation states:

> Clause 6: Flogging is applied to the pupil who violates the school regulations or to the pupil who behaves himself contrary to the Ministry Rule enacted under Revolutionary Promulgation #132.
>
> The Head of the institution or the authorized teacher shall use a stick which is not larger than 0.7 centimeters in diameter to flog his pupil and only on the pupil's buttocks. Each flogging should not be more than six strokes and done by the Head of the institution or by the authorized teacher. The flogging shall be done in the closed-door area and aimed at correcting misconduct of the pupil.

Therefore the school principal may flog the pupil only when it is found that the pupil has violated the Ministry of Education Rule #1(1972) enacted under the Revolutionary Party Promulgation #132. The school principal or the authorized school teacher shall not cite any other reason for flogging the pupil. Further, Clause 11 of this regulation states that "the flogging shall be done in good faith and not with malice or prejudice. The principal or the authorized teacher shall not flog the ailing or suffering pupil". Excessive punishment or punishment with malice or prejudice is a violation of teacher discipline, and according to the Ministry Education Circular #7754/2506 dated April 16, 1963, such punishment is considered a severe offence. The teacher who violates this circular may be terminated, put out of service, or dismissed. The following two disciplinary cases illustrate the application in practice of this provision.

> **Mrs. L's case** (already cited in another connection also). *Mrs. L punished LOO, her Grade 3 pupil, on his head twice. First, she used a meter stick to punish LOO on his head just above LOO's left ear and caused a bruise on LOO's head. LOO's mother brought her complaint to the Provincial Education Officer. Before the Provincial Education Officer, Mrs. L explained that LOO refused to copy an arithmetic exercise in his book making her angry. But Mrs. L promised she would not punish LOO with the meter stick again. A week later, Mrs. L used the same meter stick to punish LOO on the forehead. The punishment caused a bigger and more painful bruise on LOO's forehead. LOO's mother again brought her complaint to the Provincial Education Officer and the provincial prosecutor. The prosecutor fined Mrs. L 50 bahts for*

the injury. The Provincial Education Officer reported the complaint to the Governor and Mrs. L's conduct was thus investigated. After the investigation, the committee found that Mrs. L had no authority to punish her pupil, and such punishment was considered excessive and was done with malice. The Ministry of Education Circular #7754/2506, suggests Mrs. L should have been punished severely. However, after considering punishment reduction factors, the Ministry of Education issued a four-month 10 percent salary cutback (The Ministry of Education Memo dated June 15, 1979).

Mr. AO's Case. *Mr. AO was a Grade 9 English teacher. On December 11, 1979, Mr. AO was teaching English to class MS.2/5. In his teaching, Mr. AO called pupils to answer his exercise questions by using student identification number. When it came to #17 which was AOD's number, it was found that AOD was taking a nap on his desk. AOD was wakened but was not ready to answer the question. Mr. AO told AOD to stand before the class. Instead of walking to the front of the class politely, AOD put his two hands in his pockets. Mr. AO considered such a behavior impolite and thus slapped AOD on his face. After reviewing the case, the Director-General stated: Although the pupil acted impolitely, the teacher should have corrected such a behavior with kindness. The teacher should not have punished his pupil severely. In addition to the violation of the Ministry of Education Regulation (1972), this kind of punishment is also considered a violation of Section 74 and 81 of the Civil Servant Regulation Act 1975.*

Mr. AO was finally issued a 10 percent salary cutback for a period of two months (the Department of General Education Order #1845/2523 dated May 1, 1980).

It is apparent, then, that the teacher has no authority to punish the pupil unless he is delegated such authority. Only the Head of the institution has authority to do so. Even when he has been delegated the authority to punish a pupil, the teacher must adhere to the Ministry of Education Regulation Concerning the Punishment of Pupils and Students

1972. He shall not punish pupils with fury or anger or with prejudice. The level of punishment shall not be excessive. The teacher is advised to use his influence as a teacher, rather than punishment in correcting pupil's misconduct. The teacher at all educational levels should aspire to make teaching more professionalized. Flogging should be resorted to only when it is seen as unavoidable, and only after parents are notified.

As a member of the teaching profession and as a government official, the teacher possesses some degree of autonomy in making decisions concerning methods of teaching, methods of evaluation, and textbook selection. The teacher also possesses some degree of autonomy in publicizing ideas, facts or knowledge. Details of this teacher autonomy follow.

TEACHER ACADEMIC FREEDOM

The term 'academic freedom' confuses many Thai teachers. Many do not understand the proper meaning of academic freedom thus do not know what to claim from it. Therefore, to understand this term properly, definitions of academic freedom are presented.

Definition of Academic Freedom. Jaroon Suparp (1969:2) defines 'academic freedom' as:

> Academic freedom is the term applied when scholars in the pursuit of truth are allowed by the authority to teach or publish facts or theories unfavorable to the authority as well as those which are favorable.

McIver (cited in McCurdy, 1968:146), focusing on the Canadian postsecondary level, defines academic freedom as:

> ...a right claimed by the accredited educator, as teacher and investigator, to interpret his findings and to communicate his conclusions without being subjected to any interferences, molestation, or penalization because these conclusions are unacceptable to some constituted authority within or beyond the institution....It is inherently bound up in the university's task.... It is not a privilege, not a conclusion, not something that any authority inside or outside the institution can properly grant or deny, qualify or regulate according to its interests or its decisions.

The Committee on Higher Education of Great Britain defines academic freedom of individual teachers in this way (Robbins Report, 1963:para 705):

> For the individual teacher academic freedom means the absence of discriminatory treatment or grounds of race, sex, religion and politics; and the right to teach according to his own conception of fact and truth, rather than according to any pre-determined orthodoxy. It involves, further, freedom to publish and, subject to the proper performance of allotted duties, freedom to pursue what personal studies or researches are congenial.

According to these definitions, the teacher who has academic freedom is free to teach and publish his ideas or findings which are seen as facts or truth. The school or the superordinate shall not simply interfere or hinder the distribution of knowledge by the teacher.

It is the writer's observation that Thai teachers superficially possess some degree of freedom in practising their profession, and this freedom should not be considered as more constrained than that of teachers in overseas countries. However, by regulation, the Thai teacher's academic freedom is restricted. Such restriction is discussed below.

Restriction of the Thai Teacher Academic Freedom. In order to determine academic freedom of Thai teachers, these two areas of academic freedom are discussed: (1) academic freedom concerning teaching in general and (2) academic freedom concerning the publication of ideas, facts, and truth.

1.ACADEMIC FREEDOM CONCERNING TEACHING

Do Thai teachers have freedom to select course syllabus themselves? Do Thai teachers have freedom to select texts and instructional materials themselves? Do Thai teachers have freedom to select their own methods of teaching? Do Thai teachers have freedom to select their own methods of evaluation? Answers to these or similar questions are clear. The teacher disciplinary laws, the Ministry of Education regulations, the Ministry of Education promulgations, the Department promulgations, and the Deparment regulations related to the earlier questions determine guidelines for teacher practice. Teachers are required to obey these laws, promulgations, and regulations in performing their duties.

For instance, in the area of course syllabus, the Office of the National Curriculum Development is responsible for the development of curricula for all kindergartens, elementary schools, and secondary schools in Thailand. This office is also responsible for the development of programs, textbooks, and evaluation methods at each educational level. In addition, individual Departments cooperate with the Office of the National Curriculum Development in producing teacher guides and teaching plans for its teachers. Teachers are required only to organize these guides and plans in detail before implementing them.

The development of curricula for postsecondary institutions attached to the Ministry of Education is done differently. The Department which is responsible for the administration of each discipline is required to develop the curriculum for the institutions attached to it. For instance, the Department of Teacher Education develops curricula for the thirty-six Teachers' Colleges, or the Department of Physical Education develops curriculum for the Colleges of Physical Education. The teacher who works with the Department is required to use the curriculum developed by the Department. Failure to do so is a violation of law and is a disciplinary offence (Section 74 of the Civil Service Regulation Act 1975). Importantly, the student who graduates from the institution which does not comply strictly to the Department curriculum will be disadvantaged in writing entrance, selection, or appointment examinations since questions raised are based on the Department curriculum.

In the area of teaching and learning activities, the regulation or promulgation does not specify steps in teaching methodology, which raises some additional questions. For example, is the Arithmetic teacher barred from telling about his own experience in the second world war during the Arithmetic class? Is the Thai language teacher barred from assigning the students who are enrolled in the letter-writing course to practise their letter-writing skills by writing letters condemning the school principal or the Director-General? Is the physical education teacher barred from testing his students' physical strength by assigning them to plant grass and maintain the lawn? Is the teacher barred from telling truth or facts which are different from the authorized class textbook? Is the teacher barred from citing examples which vex other teachers, students, or the superordinate? May the teacher use the note-taking method in teaching? May the teacher use dialect when teaching? Answers to these and similar questions are not specified directly. However, the following disciplinary laws may provide some insight into these questions (the Civil Service Regulation Act 1975):

> Section 68:
> ...
>
> The civil servant must perform his official duties, under the law, the regulation, and the government circular industriously and conscientiously and with the intention to protect the government.
>
> Section 76: The civil servant must be polite, maintain and develop unity among government officials, and help colleagues in performing official duties.
>
> Section 81: The civil servant must not misbehave... He must not engage in or let others engage in activities that could bring disrepute to his position or duties.

Therefore the indolent teacher who employs note-taking method alone in teaching may be considered an offender under Section 68. Mrs. ACC's case (already cited in another connection also) illustrates academic freedom of teachers concerning methods of teaching.

> *Mrs. ACC was assigned to teach health education to Grade 3 and Grade 4 pupils. Mrs. ACC had many personal problems. She was absent from work several times. When she was present in the class, she preferred note-taking methods to any other method. The class leader was asked to read textbook material to other students who were told to jot down what the leader read to them. Then Mrs. ACC herself engaged in her personal work. Mrs. ACC's indolence was interpreted as a violation of Section 68 of the CSRA 1975. She was also absent from work several time therefore a 10 percent salary cutback for the period of four months was ordered (the Province of Khon Kaen Order #335/2523 dated February 14, 1980).*

With regard to teacher language and illustration, Section 76 of this act (mentioned earlier) states that the teacher must be polite. The use of impolite terms (exception shall be given to the teacher who teaches a taboo language course) shall be considered an offence. Mr. AM's case (already cited in another connection also) may better explain the academic freedom of Thai teachers regarding this matter.

> *Mr. AM was assigned to teach English to Grade 9 students. During the hour, Mr. AM used some impolite words with his coeducational classes. For instance, Mr. AM said to the class: "Which part of your body is protrusive?" "Some of you act like prostitutes," "You look sexy," etc. These words are not supposed to be used before female students. Mr. AM was therefore issued a probation (the Department of General Education Order #1493/2523 dated April 7, 1980).*

Although answers to some questions raised in this section are not addressed here, it can be noted that Section 81 mentioned earlier covers all types of teacher behavior. For instance, assigning students to write letters critical of the principal in the letter-writing course may be considered as an improper conduct and thus be a violation of Section 81. If the society perceives that students should not be assigned to plant grass or maintain the lawn by the physical education teacher or any other staff, that teacher may be disciplined under this provision. Normally the superordinate has discretionary power to determine the offence under Section 81.

2.ACADEMIC FREEDOM CONCERNING TEACHER'S PUBLICATIONS

Several questions can be raised in this area. May the teacher conduct a research which is not related to his teaching responsibility? Does the superordinate have the power to supervise research activities of the teacher? Does the teacher have the freedom to publish research findings as he wishes? Does the teacher have freedom to publish texts which are related or not related to his teaching responsibility? Do teacher publications contribute to the teacher's yearly increment? There are no direct answers to these or similar questions. However, if we look into disciplinary laws discussed in Chapter VI, we can see that on his own time the teacher is free to conduct his own research or to compile or author texts. But he may not use school time to conduct research or to author or compile texts for his own benefit or purposes. The use of school time to do personal business may be considered a violation of Section 75 of the CSRA 1975.

With regard to the contribution of teacher publications to the teacher's yearly increment award, Section 60 of the TRA 1980 states "In awarding the yearly increment, the superordinate may look into quality and quantity of work done, competence, industriousness, and the adherence to disciplines of individual teachers." Thus the teacher publications may be considered by the superordinate to reflect a teacher's industry and competence.

In general, Thai teachers do not understand clearly about academic freedom. Most Thai teachers pay little attention to it. The freedom given to the teacher is typical of the Thai style which means that the superordinate decides it. In addition, the academic freedom of Thai teachers is dependent upon environmental factors. For instance, under the law the teacher is required to consult the curriculum developed by the central office but there are many teachers who still do not do so since parents in some communities and the superordinate are not interested in what the teacher is doing. In such situations, the teacher seems to have some degree of illegal academic freedom.

In addition to academic freedom, the Thai teacher enjoys some degree of political and civil rights. Details of teacher's political and civil rights follow.

THE LEGAL STATUS OF TEACHERS REGARDING POLITICAL AND CIVIL RIGHTS

Section 44 of the Constitution of the Kingdom of Thailand 1978 delineates the political and civil rights of teachers:

> Section 44: Members of the armed forces, the police forces, and other government or local officials, enjoy such rights and liberties as accorded to the people under the constitution unless they are limited or restricted by law, by-law, or regulation issued by virtue of law in so far as it concerns political activities, efficiency, or discipline.

According to this provision, the political and civil rights of teachers are not much different from those of the people. The restriction of political or civil rights of teachers may occur if such a restriction is perceived as promoting higher efficiency or discipline to the educational organization. In addition, any such restriction must be publicized and made known to teachers.

To this point, several questions concerning political and civil rights are pertinent. What political and civil rights of teachers are restricted? Is the teacher free to utter his beliefs publicly outside the school? Is the teacher free to utter his political beliefs in the classroom? Is the teacher free to criticize government policy publicly or in the classroom? Is the teacher free to publish his ideas or beliefs in the newspaper? Is the teacher free to criticize his superordinates publicly or in the classroom? Is the teacher free to organize a strike or demonstration opposing or supporting his colleagues or superordinate? Is the teacher free to participate in strikes or demonstrations? Is the teacher free to publicize articles annoying to his colleagues or superordinate? Is the teacher free to study Marxism or Leninism? May the teacher own a department store or be an administrative member of a corporation? May the teacher be appointed to the senate? May the teacher run for office in the general election? Is the teacher free to visit a brothel or motel? May the teacher bet in horse-racing? Answers to these or similar questions are not stated directly. However the following disciplinary law (the Civil Service Regulation Act 1975) should help us find answers to these questions.

> Section 68: The civil servant is required to support the government policy.
>
> Section 71: The civil servant is required to subordinate himself to official orders issued under the law and regulations of the superordinate.
>
> Section 74: The civil servant is required to comply with office regulations and traditions.
>
> Section 76: The civil servant is required to be polite, maintain and develop unity among government officials, and help colleagues in performing office duties.
>
> Section 79: The civil servant must not hold a managing position or other equivalent position in a corporation or company.
>
> Section 80: The civil servant must not hold an administrative position in a political party.
>
> Section 81: The civil servant must not misbehave. He must not engage in or let other engage in activities that could bring disrepute to his position or duties.

In addition to these sections, most laws dealing with elections prevent teachers from participating in electoral campaigns (The Town Act 1952; the Municipal Act 1953; the Bangkok Metropolitan Act 1975; the Pattaya Act 1978; and the Constitution of the Kingdom of Thailand 1978). But the teacher may be royally appointed to the senate. Therefore in order to know the political and civil rights of Thai teachers, one needs to ponder the disciplinary laws, the related laws, and other political considerations. For instance, Section 68 of the CSRA 1975 requires that teachers support the government policy. It is therefore the responsibility of the teacher to value the policy and to explain it to pupils or parents. Criticizing government policy publicly or to pupils is thus an offence under this provision. As well, the Constitution of the Kingdom of Thailand accords rights to the Thai people to strike peacefully but teachers are not entitled to such rights if the strike is damaging or disrupting to the educational organization and if they are ordered back to work by the superordinate. Insubordination to a superordinate's order is considered a violation of Section 71 of the CSRA 1975. Again, if the society at large believes that the teacher should not participate in the strike, the teacher's engaging in strike action discredits him and is considered a violation of Section 81 of this same act.

The teacher's right to publication is not much different from other categories of rights. The article or publication, produced by the teacher, which criticizes government policy may lead to a disciplinary action. The teacher who criticizes his superordinate or colleagues -- such a criticism leads to disunity among government officials -- may also be disciplined. The two following cases concerning political and civil rights of teacher should help us better understand these matters.

> **Mr. Q's Case.** *Mr. Q produced two articles which were later published in the Wat-Tat-Tong School Journal. The first article was titled "Prospect of Thai Officials". The article included several phrases vexing to the Ministry of Education and its high ranking officials. The author decisively used analogies which ridiculed the Ministry of Education, Departments attached to the Ministry, and some Directors-General. The second article was titled*

"Letter to Pinyo[30]". The author criticized directly the administrative policy of the Education Minister. For instance, the author said "...Recently, the Educational Minister issued a disciplinary punishment order to a teacher without requiring an investigation. I am very scared and afraid about it. I am afraid that he will not be able to complete his term if he continues to do this." In another section, Mr. Q said "Somebody said that there was an Idi Amin in the Ministry of Education. I was confused upon hearing this. I know that there is no one in Thailand who would imitate Idi Amin's manners. But unfortunately, I found Idi Amin myself in the Ministry of Education..." These two articles directly attacked the administration of the Ministry of Education and the Education Minister. Mr. Q was therefore issued a 10 percent salary cutback for the period of two months (the Department of General Education Order #792/2521 dated March 28, 1978).

Mr. AU's Case. *Mr. AU and his colleagues came to Bangkok to appeal to the Director-General to rescind the transfer of the Director of the school to another province. The Director-General did not see sufficient reasons, and therefore the transfer order was maintained. Mr. AU and his colleagues were disappointed. They went back to Pitsanulok and provoked a student strike demanding that the Director of the school should not be transferred. Mr. AU's conduct was considered a violation of Section 76 and 81 of the CSRA 1975 (mentioned earlier). He was finally issued a 10 percent salary cutback for a period of two months (the Department of General Education Order #5881/2523 dated December 1, 1980).*

Although the writer cannot provide disciplinary cases to explain all areas of political and civil rights of teachers, it is evident that a conduct or activity, undertaken by the teacher, which is contrary to the disciplinary laws is usually considered as a disciplinary violation. The superordinate has discretionary power to interpret teacher behavior and to undertake disciplinary action.

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[30] Dr.Pinyo Sathorn was at that time the Education Minister

SUMMARY

In this chapter, three aspects of the legal status of teachers were addressed: (1) the legal status of teachers regarding pupils, (2) the legal status of teachers regarding academic freedom, and (3) the legal status of teachers regarding political and civil rights.

The Thai Civil and Commercial Code outlines two types of liability of teachers with respect to pupils: (1) the liability for damages caused directly by the teacher, and (2) the liability for damages caused by others when the teacher is in a position to prevent such damages. In the first case, the Thai Civil and Commercial Code states that the teacher is liable for the damage or injury caused by the teacher himself. In the latter case, the teacher will be liable if it is proved that the teacher was in the position to prevent the injury and that he did not exercise proper care. In other words, the teacher is not liable for the damages if it can be shown that he had provided proper supervision.

In addition to the civil liability, the teacher is required to adhere to the Ministry regulations in disciplining his pupils. The regulation stipulates that the teacher is not authorized to punish pupils by any means unless be delegated power to do so by the Head of the institution. Therefore, if it is observed that some students misbehave or violate the school regulations, the teacher is advised to inform the Head of the institution so that the Head of the institution can deal with the incident.

It appears that Thai teachers pay little attention to what academic freedom means to them. Thai teacher's academic freedom is regulated by the disciplinary laws. In the case where the provision of the disciplinary law is vague, the superordinate retains the dicretionary power to decide the case.

Finally, in terms of political and civil rights, these are also restricted by the disciplinary laws. The teacher enjoys political and civil rights accorded to the Thai people to the extent that these rights neither impede the efficient operation of the educational organization nor endanger orderliness and discipline of teachers.

CHAPTER IX

CONCLUSIONS, IMPLICATIONS, AND RECOMMENDATIONS

INTRODUCTION

This thesis described the legal status of teachers in Thailand. As defined earlier, the term 'legal status' refers to the relations between the teacher and other person(s) or organization(s) as prescribed by the law or regulations. The writer found that the legal status of Thai teachers is determined by nine categories of laws and ordinances: (1) the Constitution of the Kingdom of Thailand, (2) the Promulgation of the Revolutionary Party #218, (3) the Promulgation of the Revolutionary Party #216, (4) the Teacher Regulation Act, (5) the Civil Service Regulation Act, (6) acts on the establishment of educational institutions, (7) the Teachers' Act, (8) the Thai Criminal Code, and the Thai Civil and Commercial Code, and (9) government circulars. In addition to these nine categories of law, the legal status of Thai teachers is also shaped by social beliefs and customs. Influences of these laws, beliefs, and customs in shaping the legal status of teachers are summarized and discussed below.

The Constitution of the Kingdom of Thailand. The Constitution of the Kingdom of Thailand vests power in the executive to run State affairs. To provide guidelines for practice, the constitution also contains administrative policies of the government and rights and duties of citizens and government officials. In addition, this highest form of law provides that the executive shall enact subordinate laws which are not contradictory to the constitution, to guide its policy implementation. Provisions in the constitution are very general and have little specific control over teachers.

The Promulgation of the Revolutionary Party #218. This promulgation regulates relations between and among government organizations, including educational organizations. It delineates lines of control between superordinate and subordinate positions. It also outlines the executive powers of the superordinates who hold different positions in government organizations. It vests discretionary power in the superordinate to execute government affairs. Thus this particular piece of legislation has important implications with regard to the legal status of Thai teachers.

The Promulgation of the Revolutionary Party #216. This promulgation dictates responsibilities of government Ministries and Departments. The Ministry of Education is responsible for education, religious, and cultural matters. The promulgation also stipulates the number of Departments comprising the Ministry of Education. Compared with other laws, this promulgation has less control over teachers.

The Teacher Regulation Act 1980. The Teacher Regulation Act 1980 is the principal legislation containing regulations concerning personnel administration of teachers. The act stipulates the qualifications of teachers. It also details regulations and procedures concerning appointment, tenure, promotion, transfer, discipline and disciplinary procedures, benefits, and leaves of teachers. It is thus the principal law that determines the legal status of teachers. However, this act adopted legal principles of the Civil Service Regulation Act 1975. Thus regulations concerning personnel administration of teachers are not different from those concerning civil servants in general.

The Civil Service Regulation Act 1975. The Civil Service Regulation Act 1975 is the first law that dealt with regulations concerning personnel administration of government officials. The Teacher Regulation Act, for instance, states that the Civil Service Regulation Act be applied to teachers *mutatis mutandis*. Currently, the Teachers' Commission adopts disciplinary provisions of the Civil Service Regulation Act and employs them with teachers. Further, the compensation of teachers is done under the civil service regulations.

Laws Concerning the Establishment of Educational Organizations. There are a few laws dealing with the establishment of educational organizations. These include the Royal Edict Concerning Elementary Education, The Royal Edict Concerning Teachers' Colleges, the Royal Edict Concerning the Elementary Education Commission, and others. These laws determine relations among subunits comprising the individual educational organizations. They also determine lines of control within the organization.

The Teachers' Act 1945. The Teacher Act vests power in the National Teachers' Council to protect rights of teachers and to develop teaching profession. In the past, the protection of teacher rights and the development of the teaching profession were minimal. The National Teachers' Council does not have much influence on the determination of the legal status of teachers.

The Thai Criminal, and Civil and Commercial Codes. These codes regulate behaviors of all citizens, including teachers. The teacher who commits a crime or breaches a contract is required to be liable for such a crime or damage. In addition to criminal or civil liability, the teacher may also be disciplined.

Government Circulars. Government circulars may be issued by various government organizations, such as the Office of the Prime Minister, the Office of the Civil Service Commission, the Office of the Teachers' Commission, Ministries, or Departments. Many circulars regulate behaviors of teachers but some only explain to teachers how to perform their duties more effectively.

In addition to these laws, the legal status of Thai teachers derives considerably from beliefs and values of their superordinates. The law may specify the level of punishment for an offence but the superordinate has discretionary power to interpret the law. The superordinate's interpretation thus arbitarily and inconsistently affects the legal status of teachers.

Using these laws and the power of the superordinate as a frame of reference, the writer assessed the legal status of Thai teachers, and findings and conclusions attained through this assessment are presented below.

REVIEW OF FINDINGS

Certification, Appointment, Tenure, Promotion, and Transfer. The Teacher Regulation Act (1980) lists procedures concerning certification, appointment, tenure, promotion, and transfer below.

Certification. The certification of teachers in terms of a licence to teach is not yet legalized in Thailand. It is only in its preparation stage. The Teacher Regulation Act does not require the person who seeks teaching jobs to hold a teaching certificate. Any person who possesses general qualifications similar to those of newly-hired civil servants and has a degree or diploma desired by educational organizations may apply for a teaching job.

Appointment. The appointment of teachers must be in accord with provisions of the Teacher Regulation Act 1980. According to this act, only the superordinate may appoint the teacher. The appointment may be done by means of appoinment examination, selection, or others as are stated in the law.

Tenure. The Teacher Regulation Act 1980 and the Civil Service Regulation #3 require that new appointees are on probation for a period of six months. After successful practice, the teacher may be granted tenure. Unless disciplined, the tenured teacher may enjoy his teaching job until his retirement.

Promotion. According to the Teacher Regulation Act (1980), only the superordinate has authority to promote teachers. For the promotion of teachers who hold a lower position, the superordinate's discretion is sufficient. But the promotion of teachers who hold a higher position requires consent from the Department Teachers' Subcommission or the Teachers' Commission.

Transfer. The Teacher Regulation Act 1980 vests power in the superordinate to transfer a teacher. The transfer of a teacher within the Department may be done by the superordinate himself. However, the transfer of teachers from one province or one Department to another province or Department needs to be done with consent of Directors of the Office of Provincial Education or the Director-Generals of both Provinces or Departments. Further, the transfer of a teacher to a less responsible position requires consent of the Teachers' Commission prior to the issuing of the transfer order.

Accordingly, we can see that the superordinate is the one who has authority to appoint, to award tenure to, to promote, and to transfer the teacher. On occasion, the superordinate may issue an order erroneously but such an error will not make him guilty. He is required only to alter his order.

The vesting of power in the superordinate to appoint teachers confuses parents of some teachers' college graduates who seek teaching jobs. Some believe that the superordinate could help them to get a teaching job if they only give a bribe to him or to the person who has a close connection with him. Some parents might be successful but many are not. Few such cases, however, are filed in the court's rulings. It is possible that people have very little chance to know if the administration of the appointment examination, tenure, promotion, and transfer is fair or not since the law requires strict confidentiality. Most probably the explanation is that the karmic law educates Thai people to tolerate what others do. Then, again, Thai people may feel that they do not have enough power to balance the power of the superordinate who is traditionally perceived as a "boss" in Thailand.

In another sense, the vesting of power in the superordinate to appoint a teacher or to award tenure, promotion, and transfer to a teacher should be beneficial to the superordinate in term of control and supervision. The superordinate who exercises his power fairly and justly should be able to maximize the efficiency of his organization. At the same time, the exercise of power without any balancing power may lead the unethical superordinate to exercise his power on his own will rather than on the legislative will, which is unacceptable.

Disciplinary Regulations and Disciplinary Procedures. The Teacher Regulation Act stipulates that the civil service regulations and disciplinary procedures be applied to teachers.

According to the Civil Service Regulation Act, the teachers' behavior must be in accord with sixteen categories of behavior detailed below: (1) the teacher is required to believe in the constitutional form of government; (2) the teacher is required to be honest, loyal, and impersonal in performing his duties; (3) the teacher is required to obey to government policies and regulations; (4) the teacher is required to prevent national hazards and to help maintain national security; (5) the teacher is required not to disclose secret official information; (6) the teacher is required to adhere to the superordinate's dictates; (7) the teacher is required to perform his duties through proper channels; (8) the teacher is required not to convey or present false information to his superordinate; (9) the teacher is required to adhere strictly to his office's rules and regulations; (10) the teacher is required to devote his time to his official duties; (11) the teacher is required to maintain harmony among government officials; (12) the teacher is required to be polite with people and citizens; (13) the teacher is required not to behave or let others behave in such a way that can bring disrepute to his position; (14) the teacher is required not to hold a managerial position in a company or corporation; (15) the teacher is required not to hold an administrative position in a political party; and (16) the teacher is required not to misbehave.

The teacher who violates (1), (4), (7), (9), (11), (13), and (15) may receive a relatively non-severe punishment unless such a violation can be categorized as a misbehave. But the violator of other regulation(s) may receive either a non- or severe punishment. The degree of damage caused by the violation determines the level of punishment. If the investigating committee and the superordinate perceive that such a violation causes severe damage to the educational organization, the violator will be issued a severe punishment.

In determining an offence of the teacher, the Civil Service Regulation Act dictates that the superordinate follow steps included in the Civil Service Regulations. These include: (1) the accusation, (2) the naming of a fact-finding committee, (3) the presentation of evidence, (4) the naming of an investigating committee, (5) the conducting of the investigation, (6) the summarization of the investigation, and (7) the issuing of a punishment order.

Anybody may accuse the teacher of violating a regulation. But only the superordinate may name the committee to investigate the case, present the allegation statement, and issue the punishment order. Only the committee members who are named by the superordinate may investigate and summarize the case.

In the investigation, Civil Service Regulation #6 states that the investigating committee must use offending behaviors as a guideline in investigating the case. The accused teacher will not be notified about disciplinary grounds. The disciplinary ground and the level of punishment are produced after the investigation. This regulation makes many accused teachers nervous and forces them to seek protection from their patron.

In addition, legal persons of the Office of the Civil Service Commission suggest that the investigating committee and the superordinate look into these principles in determining an offence and the level of punishment: (1) the legal principle, (2) the compassionate principle, (3) the consistency principle, and (4) the government policy. In many cases, the writer observed that some sets of committees and superordinates relied heavily on one single principle, which is not the aim of the Civil Service Commission.

After receiving the punishment order, the offending teacher may appeal to his superordinate if he perceives that such an order is made on insufficient evidence. The decision on the appeal made by the superordinate is final. The court has nothing to do with disciplinary cases.

In summary, regulations and disciplinary procedures dealing with teachers must be consistent with the law. The Civil Service Regulation Act lists desirable behaviors of teachers, and the superordinate is required to supervise teachers to ensure adherence to these behaviors. In principle, teachers and superordinates should not have any difficulty in adhering to the regulations. But in practice, both the superordinate and the teacher encounter several difficulties. Many teachers do not have a correct understanding about regulations. Some do not know what kinds of behaviors are categorized as inappropriate behaviors. Some know that such a behavior is unacceptable but do not know what level of punishment to assign to the violator.

Conversely, some superordinates feel guilt at taking disciplinary actions against subordinates who are also their colleagues. As well, some unethical superordinates may threaten their subordinates with a severe disciplinary action even though such violations do not legally lead to severe punishment. The subordinate, feeling threatened, may absent himself from school and thus be punished severely on other grounds-- long-time absence-- rather than on the original grounds. These are examples of difficulties encountered by both the superordinate and the subordinate.

Salary, Benefits, and Leaves. The Teacher Regulation Act dictates that the law concerning salary and benefits of civil servants also be applied to teachers. But leaves of teachers are required to be in accord with the Ministry of Education Regulation Concerning Leaves of Teachers.

In the process, salary schedules of civil servants and teachers are devised by the Civil Service Commission, and then presented to the Council of Ministers for consideration and approval. If the devised schedules are approved, the council recommends to His Majesty the King the enactment of government official salary schedules.

The administration of teacher benefits is similar to the administration of salary schedules. However, the administration of benefits encounters more problems. The government cannot secure sufficient funds to allocate for this purpose. Many teachers who are entitled to benefits cannot claim the benefits.

With regard to leaves of teachers, the law states clearly the conditions and procedures necessary for requesting a leave with full pay. But many teachers have ignored these regulations and have thus been disciplined.

The Legal Status of Teachers Regarding Pupils, Academic Freedom, and Political and Civil Rights. The Thai Civil and Commercial Code and the Civil Service Regulation Act refers to the liability of teachers with respect to pupils, academic freedom of teachers, and political and civil rights of teachers. In respect to teachers' liability concerning pupils, the law states that the teacher is liable for injury to students if the teacher is negligent in preventing the injury. But if the teacher had provided proper care for his pupils, he will not be liable.

With regard to academic freedom, Thai teachers and their superordinates pay little attention to what academic freedom means to them. All offending behaviors under this category were categorized as offnces under different kinds of misdemeanour such as causing disunity or misbehaving.

The political and civil rights of teachers are subject to the teacher's disciplinary law. If the assertion of political ideas or civil rights can be interpreted as a violation of a regulation, the teacher may be disciplined or punished.

CONCLUSION

Based on these findings, we can see that the legal relations between the teacher and his superordinate, his peers, his pupils, and the related organization are all defined and included in the written law. The superodinate is the person who has power to interpret the law and thus is influential in shaping the legal status of teachers. Also important, in disciplining teachers, the investigating committee may influence the decision making of the superordinate.

There are different hierarchies of superordinates who have power to shape the legal status of teachers. Those noteworthy for our purposes are: (1) the primary superordinate (i.e. the school principal, the Director of the school, the Director of the college, and so forth), (2) the Director-General of the Department, (3) the Permanent Secretary, and (4) the Secretary-General of the Office of the Teachers' Commission. What are influences of these superordinates in shaping the legal status of teachers?

In disciplinary cases, the primary superordinate will be notified about the accusation. After receiving a notification of accusation, he is required to name a committee to enquire into the case. If the accusation is concerned with personal injury, the superordinate most often prefers to undertake a negotiation and compromise even though he is not authorized to do so. If a settlement cannot be reached through such negotiation and compromise, the superordinate will then usually take disciplinary action against the accused. Therefore if the relationship between the superordinate and the accused teacher is smooth, a settlement is conceivable. The disciplinary action against such a teacher will not take place.

If the disciplinary action is to take place, the primary superordinate is required to report the action to the Director-General. In this case, the Director-General may demand that another attempt at compromise be undertaken. The primary superordinate will not resist the Director-General in such a situation. In some Departments, the number of accusations in each year may reach five hundred, but only about one hundred cases are usually recorded in the Department files. This lower number is a result of the exercising of discretionary power by the superordinate.

Further, the superordinate has authority to alter the recommendation concerning the offence and the level of punishment made by the investigating committee. He has authority to determine the degree of severity of punishment for an individual disciplinary violation. The Office of the Civil Service Commission suggested that the superordinate evaluate societal views regarding each violation, but in practice the superordinate has difficulty in assessing societal norms. The level of punishment therefore relies heavily on the perceptions and memory of the superordinate.

In severe cases, the law requires that the Director-General consult the Department Teachers' Subcommission before issuing a punishment order. But the Director-General himself is President of this subcommission. Other high-ranking officials who are appointed to this subcommission can hardly refuse to adopt the Director-General's recommendation.

Next above the Director-General, the Permanent Secretary is the one who has legal power to verify decisions concerning disciplinary cases made by the Director-General. In reality, these two persons interact every day, and they respect each other. Therefore the Permanent Secretary tends generally to adopt or agree with the Director-General's decision. Only occasionally does the Permanent Secretary alter a decision made by the Director-General. Whenever such an alteration takes place, the potential for conflict between the two "*phu yai*" (big persons) escalates.

If the punishment order is approved by the Permanent Secretary, the Director-General is required to forward the order to the Teachers' Commission for approval. The Secretary-General of the Office of the Teachers' Commission who acts on behalf of the commission cannot be expected to refuse to approve an order which has already been approved by the Permanent Secretary who is the superordinate of the Secretary-General. Many times the writer detected this reaction from the Secretary-General- "the level of punishment is somewhat slight". He failed, however, to suggest an alteration in the level of punishment, even though he is required by law to do so.

The above discussion illustrates the influence of the superordinate in shaping the legal status of teachers in disciplinary cases. In the area of personnel administration, the superordinate also has immense influence on the determination of the legal status of teachers. Details of such influence are illustrated below.

The primary superordinate normally has little influence in the appointment of teachers. But he has immense influence in the area of promotion, transfer, benefits, and leaves. For example, the principal or the Director of the school is the one who has power to make recommendations to the Director-General concerning the awarding of increments to teachers. In the recommendation, the law requires confidentiality on the part of the supervisor. Even after the awarding of increments has been announced, only the person who is awarded the increment can have access to the announcement. Therefore, it is difficult to determine if the superordinate has adhered to the law in awarding increments to teachers. Even worse, the teacher who insists on investigating to know whether or not the superordinate has adhered to the law in awarding increments may be accused on the grounds of being the cause of disunity among government officials.

With regard to teacher transfer, the Teacher Regulation Act does not outline details for practice therefore the Director-General has authority to devise standards for practice for his Department. Again, the legal status of Thai teachers is directly shaped by the superordinate.

With respect to teacher benefits, the Council of Ministers has authority to allocate funds for this purpose. The law may say that the teacher is entitled to housing or travel allowance but he cannot claim for such an allowance if the fund is not allocated.

Unlike common law countries, the Thai court of justice does not have jurisdiction to rule on disciplinary cases. The punishment of Thai teachers has to be done by the superordinate. The most the court can do is to rule on the case in which the teacher files against the superordinate on criminal grounds for making him lose some benefits. But the court cannot order the superordinate to reappoint the dismissed teacher to his position, even though he was dismissed inappropriately.

. The Teachers' Act may vest power in the National Teachers' Council to protect rights and benefits of teachers. But if we look into the structure of this council which consists of the Education Minister- President of the council, Permanent Secretary- Vice President, Director-Generals (councillors), and ten teacher

Representatives (councillors), it is difficult to understand how this council can protect the rights and benefits of teachers. The Minister has the responsibility to implement policies adopted by the government. Whatever policies are handed down to him by the Council of Ministers, the Minister has a commitment to implement even though such implementation may infringe upon the rights of teachers.

The Teachers' Act also states that the National Teachers' Council is responsible for the development of the teacher code of ethics. In practice, however, the investigating committee and the superordinate rarely look into the code of ethics in taking a disciplinary action against the teacher. They focus entirely upon the legalities of the case as defined by appropriate legislation.

Based on this discussion, it is appropriate to assert that the legal status of Thai teachers is determined and shaped by written laws and by teachers' supervisors. The written laws vest power in the supervisor to use his discretionary power in most cases to determine the legal status of teachers. The written laws' provisions therefore support the patron-client structure which already exists in Thai society. Questions that arise through this discussion are that: what would be the long range consequence of this practice if the superordinate proceeds to use the discretionary power on his own will rather than on the legislative will? Will the teacher emphasize knowledge or academic advancement for his pupils? Will the politician or the outsider be able to put more pressures on the superordinate?

In addition to the superordinate, the investigating committee is another group of persons who have legal power to determine the legal status of teachers. The Civil Service Regulation #6 determines that the investigating committee has the responsibility to collect facts relevant to the case and to summarize the investigation. The committee must make recommendations to the superordinate concerning the offence and the level of punishment. But the regulation does not require that members of the committee have legal backgrounds. Therefore it is difficult to expect that the committee could have the expertise to maintain over time the consistency of the punishment. Worse, all reports of investigations are kept confidential. With the exception of the committee member who works with the Legal Section or Division, committee members have no access to previous cases; therefore the committee cannot apply the consistency principle in making recommendations concerning the level of punishment.

IMPLICATIONS

Implications for the National Teachers' Council. The writer found that the superordinate has too much influence in determmining the legal status of teachers. Provisions in the written law cannot do much if the executive and the superordinate do not adhere to the law. The writer suggests that the National Teachers' Council which has legal power to protect rights and benefits of teachers balance the exercising of power of the superordinate.

In protecting legal rights of teachers in disciplinary matters, the council may seek ways to participate in the investigation of the case.

In the area of appointment, promotion, and transfer, the council may review the adherence to the law of the superordinate. Wherever a defect is observed, the council must request an alteration or file a case against the defective superordinate.

In addition to the responsibilities noted above, the council should strive to provide better welfare and working conditions for its members. Whenever the rights of teachers are infringed, the council has to strive to regain such a legal right. For instance, the law states that the teacher is entitled to a housing allowance. If this entitlement is denied by the executive, it is left to the council to lobby for it.

To be able to perform these functions, it is necessary that the council develop a better relation with its members. The council needs to make teachers feel that the National Teachers' Council is their professional organization and that teachers gain some benefits from the council.

There are many ways to develop a closer relationship between the council and its members. The council may organize staff development activities such as seminars, workshops, conferences, in-service training activities, and others for its members. These could also help improve the degree of professionalization of its members. The teacher will become creative, active, critical, and independent. He will be able to make decisions on his own and not only to rely on his superordinate's dictates.

Another means that could help develop connections between the council and the teacher is the teaching certificate. The council needs to educate Members of Parliament to enact the laws concerning teaching certificates. The council should have authority to screen members of the teaching profession.

Above all, the council can hardly perform these functions if it does not change its structure. Members of the council, including the President of the council, should be named to the council by means of election but not by appointment.

Implications for Educational Organizations. The writer found that teachers did not know their legal status. Ignorance of the law, in this case, was a definite factor in many teacher violations of laws and regulations relating to the teaching force. Therefore, to help teachers know their legal status, teachers' training institutions should train their staff to be able to teach a course in educational law, especially the legal status of teachers. And a course in educational law should be offered as a required course at the undergraduate level.

In addition to teachers' training institutions, Departments and the Ministry should more effectively recognize the legal status of teachers. The primary superordinate should know the legal status of teachers thoroughly and try not to infringe upon their legal status. Especially in disciplinary and personnel administration matters, the superordinates and educational organizations should carry out their duties under the principle of natural justice as was defined earlier. Departments, incorporated with the Office of Teachers' Commission, should train their staff members to be able to conduct a disciplinary investigation. A group of such staff should be available in every province. In addition, to raise standards of the teaching profession, the Teachers' Commission should devise and employ its own disciplinary law instead of relying upon the civil service regulations. Such a law should focus more on classroom behaviors rather than on external behaviors such as gambling, guarding the office, participating in illegal shares, and so forth.

Implications for Teachers. Thai teachers formerly were regarded as sacred persons (not true in the contemporary Thai society). Many circumstances have forced teachers to change their roles. However, it is necessary that Thai teachers raise and maintain their standards of performance. They should put more emphases in serving their clients, students, rather than their superordinate. Thai teachers should improve themselves in every way so that they can become more independent and can practise their profession with more confidence. Even though a government teaching certification system has not yet been developed in Thailand, Thai teachers may consult Ryan and Cooper's criteria in improving their teaching performance. This may help the teacher gain confidence and independence, and thus rely less on the superordinate.

Along with the enhancement of their professionalism, Thai teachers should continue to maintain and secure more respect from parents and the public. They need to act as good exemplars to their students. They must not misbehave with respect to societal views. They must consult the teachers' disciplinary law and the teachers' code of ethics in performing their duties. They should avoid participating in activities that could jeopardize national security and stability. They should pay less attention to protecting the unethical superordinate for the exchange with personal benefits.

Another observable fact derived from this study is that the superordinate has power to determine the legal status of teachers. On the opposite side, teachers are required to obey their superordinate's dictates. If not, they will be disciplined. They have very little power to negotiate with their superordinate. Therefore, to prevent the discharging of power on the superordinate's whim, Thai teachers should band together and use their collective power to negotiate with their superordinate. This massed power could be in the form of the teachers' association, the teachers' union, the teachers' council, or the like. The teacher will not be able to deal with his professional problems if he does not get support from his professional organization.

RECOMMENDATIONS FOR FURTHER RESEARCH

In this study, the researcher collected disciplinary cases from one Department only. The researcher observes that disciplinary cases which were processed at the provincial level lacked some consistency. Some superordinates adhered strictly to provisions of the law while some others were more flexible. For instance, some superordinates considered punishment reduction factors in issuing the punishment order while others ignored them.

Some superordinates were knowledgeable in educational laws while many were not. The researcher is uncertain if there are some inconsistencies in the level of punishment among offending teachers who are attached to different Departments. A comparative study on this topic should be pursued.

Another observation derived from this study is that the superordinate sometimes exercises discretionary power beyond his legal power, due to misunderstanding. The teacher himself does not know the legal power of his superordinate. It would be beneficial to the Thai educational system if further investigations on the legal status of the superordinate and the question of limitations to discretionary power were pursued.

Finally, the researcher found that both the teacher and the superordinate pay little attention to benefits of students in terms of the legal status of their teachers. The disciplinary law does not emphasize classroom behaviors of teachers. It would be beneficial to parents and students if an investigation on the legal status of pupils were pursued.

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Mr. F vs ______________________________, 1979.

Mr. G vs ______________________________, 1980.

Mr. H vs ______________________________, 1979.

Miss I vs ______________________________, 1981.

Miss J vs ______________________________, 1981.

Miss K vs ______________________________, 1979.

Mrs. L vs ______________________________, 1979.

Mr. M vs ______________________________, 1980.

Miss N vs ______________________________, 1982.

Mrs. O vs ______________________________, 1979.

Mr. P vs ______________________________, 1980.

Mr. Q vs ______________________________, 1978.

Mr. R vs ______________________________, 1980.

Mrs. S vs ____, 1980.

Mr. T vs ____, 1980.

Mrs. U vs ____, 1979.

Miss V vs ____, 1975.

Mrs. W vs ____, 1980.

Mr. X vs ____, 1979.

Mr. Y vs ____, 1981.

Mr. Z vs ____, 1980.

Miss AB vs ____, 1980.

Mr. AC vs ____, 1980.

Mrs. ACC vs ____, 1980.

Mr. AD vs ____, 1980.

Mr. AE vs ____, 1980.

Mr. AF vs ____, 1978.

Mr. AG vs ____, 1978.

Mr. AH vs ____, 1979.

Mr. AI vs ____, 1978.

Mr. AJ vs ____, 1979.

Mr. AK vs ____, 1980.

Mr. AL vs ____, 1978.

Mr. AM vs ____, 1980.

Mr. AN vs ____, 1981.

Mr. AO vs ____, 1980.

Mr. AP vs ____, 1978.

Mr. AQ vs ____, 1979.

Mr. AR vs ____, 1979.

Mr. AS vs ______________________________, 1979.

Mr. AT vs ______________________________, 1978.

Mr. AU vs ______________________________, 1980.

Mrs. AW vs ______________________________, 1979.

Miss AX vs ______________________________, 1978.

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D. Court Cases

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Chai Ban-moo vs Mean Songklo-huang, Chin Songklo-huang, and Chom Changto, the Thai Supreme Court Ruling #356/1968.

Appendix

Appendix A

EXAMPLES OF INTERVIEW QUESTIONS

INFORMANT: AMARA RAKSASAT

1. Teaching in Thailand is a very secure profession. Most new appointees are granted tenure after six months under the probationary period. Teachers are said to be unenthusiastic after receiving tenure. What should we do in order to make teachers enthusiastic in the performance of their teaching duties?
2. Should Thai teachers hold a teaching certificate prior to their teaching appointments?
3. Do you feel that Thailand has too many official circulars and that sometimes these circulars are contradictory to each other?
4. Thai teachers are discriminated against in comparison with other groups of government officials. What are your reactions to this accusation?
5. What should the government do in order to prevent the inappropriate use of a superordinates' discretionary power when it contradicts the legislative will?
6. In disciplinary cases, the Secretary General of the Teachers' Commission has power to recommend an alteration concerning the level of punishment which was already approved by the Permanent Secretary who is the superordinate of the Secretary General. In practice, do you think the Secretary General is encouraged to do this?
7. Practices concerning personnel administration of Thai

teachers are kept confidential. Could you explain about reasons behind regulations concerning these practices?

8. Should Thailand have an administrative court to balance the power of the executive?

INFORMANT: CHAMLIANG WUTHIJAN

1. Each year, many teachers are investigated on the grounds of violating school rules and regulations. Do you have some explanations for this phenomenon?
2. Should teachers' disciplinary laws be different than disciplinary laws of other groups of government officials?
3. Should Thai teachers hold a teaching certificate prior to their teaching appointment?
4. Should the government expand the probationary period of teachers?
5. Thai teachers are discriminated against in comparison with other groups of government officials. What are your reactions to this accusation?
6. What should the Ministry of Education do in order to supervise the use of discretionary power by an unethical superordinate?
7. Some superordinates are flexible, some are rigid. What should the Ministry do in order to standardize performance of the superordinate?
8. What should the Ministry of Education do in order to maintain consistency in the level of disciplinary punishment of teachers?
9. Should the Ministry of Education reduce the confidentiality of rules or regulations concerning personnel administration of teachers?

10. Should the Office of the Teachers' Commission be attached to the Office of the Prime Minister so that the Office can better supervise performance of educational organizations?
11. What would be the advantages or disadvantages for Thai teachers if Thailand had legislation concerning the administrative court?

INFORMANT: KITTI HASANEE

1. Please explain progress concerning the initiation of the teaching certification system in Thailand.
2. Please explain details concerning proposed legislation of the teaching certification system in Thailand.
3. What are the major impediments to the implementation of the teaching certification system in Thailand?
4. If the law concerning the teaching certification system is enacted, what do you plan to do with teachers who are already in the school system but have no teaching certificate?
5. What criteria will you consult in granting a teaching certificate?
6. What is the actual role of the National Teachers' Council in providing and protecting teaching profession?
7. Does the National Teachers' Council have legal power to enforce the adherence of teachers to its code of ethics?
8. Do you feel that Thai teachers are discriminated against when compared with other groups of government officials? If so, what does the Council plan to do to eliminate the discrimination?
9. Does the National Teachers' Council encounter any difficulty in carrying out its legal duties and responsibilities?

10. In your opinion, should the National Teachers' Council get involved in teachers' disciplinary cases?
11. What is your reaction to the present structure of the National Teachers' Council?

INFORMANT: PRAJUAB SAENG-IN

1. Please explain steps in taking a disciplinary action against a teacher.
2. Do you feel that Thailand has too many rules and regulations concerning personnel administration of teachers and that it is difficult for the teacher to be knowledgeable of them?
3. Should Thai teachers hold a teaching certificate prior to their teaching appointment?
4. Should Thai teachers have the right to participate in drafting bills that have control over them?
5. Some disciplinary cases took more than three years to investigate. Why did they take so long when the regulation on this matter says that the case has to be investigated within 30 days?
6. What should the Ministry of Education do in order to maintain consistency in the level of punishment in teachers' disciplinary cases?
7. What should the Ministry do in order to supervise the use of discretionary power of the superordinate at different levels?
8. Practices concerning personnel administration of Thai teachers on several matters are kept confidential. What are reasons for these provisions?
9. Each year, many Thai teachers were investigated on the grounds of violating school rules or regulations. Do

you have some explanation for this phenomenon?

10. What are the practices concerning the awarding of punishment reduction to the guilty teachers in this Ministry?

11. How often did the Secretary General of the Office of the Teachers' Commission recommend an alteration in the level of punishment which was already approved by the Permanent Secretary of the Ministry of Education?

12. What grounds should the teacher cite in presenting his appeal?

13. Should Thai teachers hold a teaching certificate prior to their teaching appointment?

INFORMANTS: SONGCHAI SAIHONG
AND DEREK SOMAYA

1. Please explain the steps in taking a disciplinary action against a teacher which are practised in this Department.
2. Many teachers were accused and investigated on the grounds of violating school regulations. Can you explain what should be the cause(s) for such violations?
3. Some school principals are flexible; some are rigid. What should the Department do in order to standardize performance of the school principal?
4. The disciplinary action is carried out totally by the superordinate without any balancing power. Is it fair for the teacher who is involved in the case?
5. If a teacher is investigated on several disciplinary grounds and it is later found that he is guilty on all grounds, how do you decide the level of punishment in such a case?
6. Please explain the reasons for a reductional punishment in disciplinary cases.
7. Some Ministries notify the accused official of the grounds for the accusation prior to the investigation, but some do not. Do you have some explanations for this?
8. Should the investigating committee take an oath before

conducting a disciplinary investigation? Please explain.

9. Should the law specify the expiry date of disciplinary cases?

10. What does the Department normally do when the Office of the Teachers' Commission comments that the level of punishment of a particular case is somewhat slight?

11. What grounds should the teacher cite in presenting his appeal?

12. Should teachers be allowed to participate in drafting the bill which has control over them?

13. What would be advantages or disadvantages for teachers if Thailand enacted legislation on the administrative court?

INFORMANT: SURAJ SILAPA-ANANT

1. Should Thai teachers hold a teaching certificate prior to their teaching appointment?
2. Some school principals are flexible; some are rigid. What should the Teachers' Commission do in order to maintain standards of performance of the superordinate?
3. Many disciplined teachers plead ignorance of the law. Do you believe that they are really ignorant of the law?
4. Do you think that teacher-education institutions' programs are already appropriate in term of preparing their graduates to become familiar with educational laws?
5. Should Thai teachers' disciplinary laws be different from disciplinary laws of other groups of government officials?
6. What are the advantages of having many levels of organizations reponsible for teachers' disciplinary matters? As an Acting Secretary General, do you feel comfortable in altering the level of disciplinary punishment which was already approved by the Permanent Secretary who is your superordinate?
7. Thai teachers are discrimated against in comparison with other groups of government officials. What are your reactions to this accusation?
8. In appointment examinations, some applicants may

attempt to bribe to the appointment examination committee. What procedures or strategies do the Teachers' Commission employ in order to educate beliefs of the applicants on this matter?

9. What factors should the superordinate consider in awarding tenure or a transfer to a qualified teacher?

10. How successfully has the Office of the Teachers' Commission performed its duties?

INFORMANT: WANNOR MATA

1. Please explain the role of the legislative committee on education.
2. To what extent does the legislative committee take into consideration the advocacy of interested groups in drafting bills?
3. Some superordinates are flexible; some are rigid. What should the parliament do in order to help the executive maintain standards of performance of government officials?
4. What are your reactions to the present structure of the National Teachers' Council?
5. Do you feel that Thai teachers are discriminated against in comparison with other groups of government officials? If so, what should the parliament do in order to eliminate the discrimination?
6. Should Thai teachers hold a teaching certificate prior to their teaching appointment?
7. Should teachers' disciplinary laws be different from disciplinary laws of other groups of government officials? Why?
8. Should the government reduce the confidentiality of rules and regulations concerning personnel administration of teachers?
9. Should the Office of the Teachers' Commission be attached to the Office of the Prime Minister so that it

may perform its duties more effectively?

10. Should the law specify the expiry date of disciplinary cases?

Appendix B

SCHEDULE OF INTERVIEWS

SCHEDULE OF INTERVIEWS

#	Informants	Date
1	Dr.Amara Raksasat	March 9th, 1982
2	Chamliang Wuthijan	March 16th, 1982
3	Derek Somaya	April 1st, 1982
4	Kitti Hasanee	March 5th, 1982 March 17th, 1982
5	Prajuab Saeng-in	March 15th, 1982
6	Songchai Saihong	March 31st, 1982
7	Dr.Suraj Silapa-anant	March 8th, 1982 March 10th, 1982
8	Wannor Mata	March 23rd, 1982